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Murshidabad Murder Case.

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PROCEEDINGS

BEFORE THE

SESSIONS JUDGE, MR. D. I. MONEY,

CONTAINING THE

Speeches of

LONGUEVILLE CLARKE, ESQ., AND W. A. MONTRIOU, ESQ., *Barristers-at-Law*,

COUNSEL FOR THE DEFENCE;

AND THE

Reply of

E. T. TREVOR, ESQ., C. S., *Prosecutor on behalf of Government*,

TOGETHER WITH THE

Report submitted by the Sessions Judge,

AND THE

JUDGMENT OF THE NIZAMUT ADAWLUT.

SEPTEMBER 7TH, 1853.

[*Extracted from the "Bengal Hurkaru" of the 13th and 14th October.*]

THOMAS JONES, *Calcutta Gazette* OFFICE.

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Proceedings

BEFORE

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CONTAINING

The Speeches of LONGUEVILLE CLARKE, Esq., Barrister-at-Law, and W. A. MONTRIOU, Esq., Barrister-at-Law, *Counsels for the Defence;*

AND THE REPLY OF

C. B. TREVOR, Esq., C. S., *Prosecutor on behalf of Government,*

TOGETHER WITH THE

REPORT SUBMITTED BY THE SESSIONS JUDGE, AND THE JUDGMENT OF THE NIZAMUT ADAWLUT.

September 7th, 1853.

Mr. Longueville Clarke addressed the Court to the following effect:—

"I have the honor of appearing before the Court on behalf of five of the thirteen prisoners now under trial. The names of my clients are Aman Ali Khan, Jowahir Ali Khan, Musserut Ali Khan, Meah Bellal, and Meah Ekbal, and they are arraigned on six counts, but against the first only there is a seventh count. The first and second counts charge them all with being principals and accessories to the murder of Hingoo and Muddee. The third charges them with being privy to the crime, but what legal offence this count is intended to describe my experience is too limited to enable me to determine, for the language is defective and the object is vague. The fourth count accuses them of torturing and beating, which only amounts to aggravated assault, as it does not allege that death was the result. The fifth count alleges that they were accessories to the crime charged in the fourth. To the sixth count the observations I have made on the third are equally applicable, and the seventh, which charges Aman Ali Khan alone with issuing orders for the beating and torturing, is as regards him a mere repetition of the fifth count.

Having analyzed the charges I cannot enter on the merits of the cause without gratifying myself by expressing to the Court my deep feeling of obligation for the manner in which this trial has been conducted—a conduct which has been alike beneficial to my clients, and to me of the most important assistance, and while the tone which has prevailed and the aid which has been rendered have equally supported the dignity of the Court and evinced its humanity, I shall have to comment on the course which Mr. Trevor has adopted in regard to some of the witnesses, of which I now will merely say, that it was alike honorable to the prosecution as it was considerate towards the prisoners, while both he and Sumbhoonauth Pundit have in the kindest manner rendered me valuable service by their interpretations and allowing me the inspection of documents.

I am anxious to call the attention of the Court in the first instance to the leading points of the case on which the prosecution must rest. Every concomitant by which atrocious murders are characterized is not only wanting, but has actually been reversed in the story which the Court must believe before a verdict of guilty can be pronounced. Suddenness, solitude, and secrecy are the distinguishing marks of the worst murders, but this murder according to the evidence has been the most prolonged, the most public, and the easiest of detection and conviction that the annals of perjury can shew has ever been attempted to be proved.

About eight days was the time that this flogging, burning, and torturing was said to have occupied. It began at Purranpore, it was repeated at Nangareah, then again at Purranpore, from which the victims were carried to Alall, and the scene closes at Gajote. There was no secrecy for the passers-by, and all the camp could see, and the camp contained about four thousand persons. But as if all this were not sufficiently monstrous, one witness swears that the wretched men were brought into his Highness' tent, whose permission was solicited to blow them away from a gun; others swear that during the whole time they were kept tied within twelve cubits of the Nawab's tent, and that he must have heard their nightly screams. All this is represented to have been done by the orders of my client Aman Ali Khan, yet it is not pretended that he could have had any motive for such unheard-of cruelty. The stolen property did not belong to him, nor does it appear that the accused had in any way given him offence. He is the favourite of the Nawab, the head of the palace,—that is known, and that

I admit; for it constitutes the first step in my defence, it is the key which unlocks the mysteries of this case. Was there ever a favourite yet, was there ever a successful courtier, who had not in the palace a hundred implacable enemies who considered his honors to be a robbery of their rights? I say that this is the case here, and it is palpable to common sense. The details of the story are too monstrous for belief. Aman Ali Khan had neither object nor motive, he had not anything to gain, but all to lose, the abhorrence of a humane master, the vengeance of a vigilant Government, the detective qualities of a talented European neighbourhood,—can it be believed that devoid of motive, without loss to annoy, or insult to provoke, he would have braved this array, and dared the gallows.

If then I prove that Aman Ali Khan is not guilty, from the absence of all motive, the certainty of detection and the dread result which must have followed, it is a much more easy task to prove why the charge has been made which so reeks with conspiracy and perjury. I ask a question of the Court. Is it not true that Mr. Carnac, the Magistrate, has been taxed, overwhelmed, and oppressed with having sixty-eight witnesses vomitted on him as I allege by the plotters in the palace? It is true the calendar proves that? Is it not true that of these sixty-eight witnesses only about twenty have been called by the Government prosecutors, and the rest abandoned? It is true the record of the Court proves that? Is it not true that of the twenty examined, five of them were declared by Mr. Trevor to be unworthy of belief, and one of the five committed by the judge for perjury? The records of the Court again will prove that is true.

Whence then has all this fearful scene of perjured iniquity arisen? Not from Aman Ali Khan, whose innocence is his best defence, but from the plotters in the palace, whose success depended on that ruin which they hoped by conspiracy and perjury to effect.

I now proceed to remark on the evidence in detail, and will commence by observing that I shall not detain the Court with any comments on the statements of the five witnesses who were rejected by the prosecutor, namely, Shaik Methoo, Khyrattee, Subjeeferose, Joomuck Doctor, and Jeebun Pattan. What they said cannot affect my clients, but must damage the general credit of the case which they have attempted to support.

The first witness who was put into the box was Dhunnoo Shaik, and the account he gives of himself, independent of discrepancies, must taint the whole of his evidence. He admits that twelve years ago he was in consequence of the darogah's report discharged from the Police, of which he had been a burkundaz, since that time he has been a wanderer and without employment, subsisting by begging and being an itinerant vendor of smoke, that he had delayed giving information at other thannahs, but hearing, as he says, that the darogah was inquiring for him, he voluntarily came forward in the hopes of earning a good name, and becoming an comedwar. Having clothed himself with these qualifications, he would have the Court believe that he went to the door of the Nawab's tent, stood within a cubit and a half of his Highness' person, heard him deliver his directions, yet none of the body-guard or numerous servants drove him from the place, or even ordered him to retire. In his statements, Dhunnoo Shaik alleges that the Nawab returned on the day of the alleged theft at one o'clock, and that the arrest of the suspected parties took place about an hour before, yet it is proved by witnesses far more creditable that it was the custom of his Highness to remain out until four, five and six o'clock, that on this day he returned about five, and that the arrest of the suspected parties was about nine in the morning. Now these mistakes are too palpable to admit of any other solution than that the witness could not have been in the camp at the time to which he deposes.

This witness stated before the Magistrate that Aman Ali Khan had said to his Highness, if you will give the order I will have the thieves blown from a gun, but in this Court he never mentioned that such a request had been preferred to the Nawab,—on the contrary, he represents it as a direct threat to the thieves from Aman Ali, and when asked to reconcile this discrepancy he attributes it to a blunder of the Magistrate's writer. But I will not detain the Court with further comment on such evidence.

The second witness, Hingun Khan, was a beggar, in a pitiable state of frightful leprosy, and he admitted that the darogah had sent for him at the instigation of the discarded burkundaz and aspiring comedwar. The offspring was worthy of the accoucheur, and if possible surpassed him in improbabilities and discrepancies. He alleges that as early as 12 o'clock in the day he saw Aman Ali Khan cutting a bamboo and beating the thieves at the tent of the Meahs, yet before the Magistrate he swore that he did not see any one beat, but heard the Khan give orders to beat, whereon he was frightened and ran away. It will also be observed that this witness does not depose to either of my clients, Musserut Ali Khan or Meah Bellall, beating or ordering or taking any part in the alleged transaction. It has been distinctly proved by George Shopcott, who has been nine years in his Highness's service, that it would have been inconsistent with the rank of Aman Ali to have gone to the tent of the Meahs, and is it then possible to believe that he would still further have degraded himself by personally chastising a thief. I pass over such evidence.

The next witness comes forward under circumstances of grave suspicion. The stolen property had been under his care, and stealing or negligence might be imputed to him. He was personally interested in warding off imputation or detecting the thief, and it must therefore all throughout have been his anxious object to achieve them; accordingly we find him immediately accusing Burra Sahib and Mogul Jhan of having practised a joke on him, which they deny. He never suspected Muddee or Hingun, nor mentioned their names, yet within a quarter of an hour Burra Sahib produces Muddee as the thief, but on what ground or for what reason no explanation has been given. As far as the Court knows, Burra Sahib may have pounced on the first man he met with for good reasons of his own, and lost no time in administering punishment, as if the guilt of his victim were beyond a doubt. The Court will not forget that Burra

Sahib is in the service of some Begum, and fled on inquiry being instituted. It will also be found that Hossainee in no one respect whatsoever inculpates his master Urjumund. If this be false it taints all his evidence, but if it be true, as I believe it strictly is, then can it be credited that Aman Ali, who had sustained no loss, should cause a cruel murder to be committed, while the man who was plundered was forbearing and forgiving.

This witness will be found to contradict the two former witnesses Dhunnoo Shaik and Hingoo Khan, for he states that on the return of the hunting party his Highness retired to his tent, Aman Ali to his own, and the Meahs to theirs, from which the Meahs proceeded to Aman Ali Khan's tent to inform him of the theft, and it was then he gave the orders to beat. How can this be reconciled with the evidence, which represents the thieves having been taken by Aman Ali to the tent of the Nawab, and Aman Ali having gone to the Meah's tent and with his own hand inflicted punishment? Of the three stories two must be false, or is it not more probable that all three are untrue? Yet these men are the three first witnesses for the prosecution, and is it on such evidence that men are to be hung?

Here let me solemnly declare that in regard to my five clients, as I view the case on the one hand, and weigh the evidence on the other, the eternal and undeviating principles of mercy and of justice demand from the Court an entire acquittal, or capital punishment. Mercy will always free those against whom perjury may have conjured up suspicion, but justice will administer the least of punishment to the miscreants who murder by torture. The language is as true as it is bold, but such is my confidence in my case, that I should have ill discharged my duties had I employed expressions less decisive.

Again, the statements by this witness of the position of the thieves, with legs and arms stretched out, laid on their backs, their feet held up, and beaten on the soles of their feet, and above all the brandy which the doctor gave them to drink and also applied to their bodies and mixed with their poultices, are inconsistent with, or are contradicted by the evidence of all the other witnesses; and I may here shorten the matter by concluding these remarks with calling the attention of the Court to the statement of the various vehicles which this witness and also each of the other witnesses describe to have been the means of conveyance by which the accused were transported from one spot to another. No two of them agree.

And now passing over Methoo and Khyrattee, who were rejected by the prosecutor, it is my province to introduce and point the consideration of the Court to the merits of Shaik Ruhim Allee, the cook. He had never been employed in the Nawab's service, nor ever joined the camp before, but he swears in the commencement of his evidence that he made jugy soup for his Highness. This is modified afterwards to pounding the ingredients, and finally dwindles to watching the boiling of the pot. With the Prime Minister, Aman Ali, he comes out much more strongly. When his Highness eschews jugy soup, the favorite courtier takes to curry, and more unaccountably he takes to the ticca cook to make it. Now if I could believe this story, and if it were proved that the Khan had disapproved of the ticca cook's curry, then I could be tempted to believe that the ticca cook being an injured individual, and having more prudence than courage, sought reparation for the insult by the safer course of the law and the rope, than the cookery but hazardous experiment of a sop in the pan.

I implore the pardon of the Court for the lightness of these observations, but I am uncontrollably overcome by the immeasurable absurdity of our ticca cook's history of himself, the exploits he performed, and the evidence which he has dished up and which he believes the Court will swallow. But let me point out a few of his inconsistencies. Look to his answers to the Court about the orders of the 9th of May and the 14th of June; look to what he says that the theft was discovered at half past six o'clock A. M. precisely, whereas Shaik Hossainee, who lost the property, did not discover the robbery till nine. This cook told the Magistrate that Aman Ali and the Meahs lived in the same tent; he describes what Affreen and Meah Ekbal did, yet he could not see from the kherkannah what was going on, and he swore in contradiction to every witness that his Highness and Aman Ali rode on the same elephant. I ask the Court is this man to be believed? Was he ever in the camp at all, or has he been recruited as the leper was by Dhunno Shaik, that Alpha of the prosecution, and the darogah's domadeen.

The seventh witness sworn was Shaikh Ameen Ali. I pass him over as he was merely called for as a matter of form.

The eighth witness only, Jingoo, speaks of one of my clients, Musserut Ali, and all the offence he proves against him is that from the distance of an arrow's flight he saw Musserut following a crowd. It were idle to detain the Court with commenting on evidence which does not support any of the charges preferred.

The ninth witness, George Shopcott, gave in my humble judgment evidence alike unquestionable as to probability of fact and honesty of motive. I will not comment on his statements. I leave them to the judgment of the Court, but if they obtain the credit I think they deserve, they must disprove the leading points of the case for prosecution and secure the acquittal of my clients. I would particularly point to the character he has given of Aman Ali Khan, and which I will incontrovertibly confirm by other evidence.

The tenth witness, Dhoolole hurkaru, saw blows given but cannot name who gave them. I have not denied, nor will I deny the savage treatment which these unfortunate victims suffer from Burra Sahib and the camel driver and others. My case is that my clients were neither art or part in these cruelties, and I pass over the evidence of this witness as not impugning them in the least.

The eleventh witness, Gousee chopdar, speaks only to one of my clients beating, that is Meah Bellal. I ask the Court to turn to his evidence; it amounts to improbable story. He says that in the morning that he saw the thieves taken toward the mangoe tope. He recognized ten persons with the thieves, all of whom he names, and adds there were many others. Of these he singles out seven as inflicting blows, and one of them, Ekbal, he particularizes as not beating. This is absurd on the face of it, as a man after a lapse of five months could possibly pick out seven men from a large crowd, who were beating, and one who was not. Such evidence is palpably offspring not of fact but of fancy, and the

hall of justice is not the nest in which fancy can be permitted to breed.

The twelfth witness who was sworn, Shaik Shoobuttie, is one of the rejected of the prosecution.

The thirteenth witness, Shaik Jaylee, the ghareewan, in no way affects my clients; and the fourteenth witness, Hajee Nowmash, comes under the same class.

Ameer Ali was the fifteenth witness who was called before the Court, and if this person who was produced for the prosecution is believed, there is an end of the case against my five clients. He distinctly contradicts Dhunoo Khan and Hingoo Khan as to Ameer Ali Khan having gone to the tent of the Meahs, for he says, I did not see Aman Ali go to the tent of the Meahs but they used to go to him, and whenever he gave any orders he used to send for them. This fully corroborates George Shopcott's statement regarding the position and rank of Aman Ali in the camp. Again, Ameer Ali contradicts all the witnesses who allege that Meah Bellal was one of the party who took the thieves to the river and who joined in beating them. He states that there were five persons who did it, and he named them all, and pointed them out, and Meah Bellal was not among them, but Shaik Hossainee the approver, was, and in this he is confirmed by the eleventh witness, Gousee chopdar. This fact is not more important than probable. It not only throws a doubt on all Hossainee's evidence, but is also a positive contradiction, and can anything be more probable than that the man to whom blame if not suspicion attached, as the stolen property had been in his charge, should join in the beating, which was inflicted to compel its restoration.

The sixteenth witness, Mahomed Ameer, confirms Ameer Ali regarding Aman Ali Khan not having gone to the tent of the Meahs, and distinctly states that had he gone there or beaten the thieves, or taken them to his Highness's tent, or asked permission to blow them from a gun, he must have seen and heard it.

I would particularly point the attention of the Court to a most important statement made by this witness, that on the day of the robbery he had been out with the hunt, and on their return they were informed of what had taken place, and that the thieves had been captured. His Highness and Aman Ali Khan each retired to their own tents, and the witness proceeded to where the thieves were kept. He returned to Aman Alie, and stated that the men had been beaten, who immediately dispatched a servant with orders to prevent it. The next morning it was reported that the thieves had been again beaten, and Aman Ali dispatched another servant with similar orders. This man gave his evidence in a fair and distinct manner; there was no discrepancy or contradiction in his evidence before the Magistrate and the Court. His position in the household is respectable, for he draws a salary of one hundred a month, and being produced by the prosecution I have a right to demand that he should be credited. I doubt that my friend Sumboonauth Pundit can find zeal enough to solicit the Court to disbelieve this most respectable of his witnesses, and fix its faith on the evidence of the oomedwar, the leper, and approver.

The seventeenth witness, Joomuck Doctor, is another of the discarded of the prosecution, and the eighteenth and nineteenth, Shaik Khagattee and Shaik Shakwee, do not affect my clients, but merely prove that one of the unfortunate victims was washed and buried. The twentieth witness is the fifth and last of the discarded ones, and the twenty-first, Bhugobun Ghose, the apprentice of the Doctor, does not name one of my clients, and with him the case closes.

I shall content myself with merely calling a few witnesses to the character of my clients, for as I can conscientiously affirm that in my humble judgment I cannot find anything in the case against my clients which is not either too monstrous for even credulity to credit, or else has been contradicted by evidence for the prosecution. It has been often and truly said that the besetting difficulty attendant on every case which is tried in an Indian Court is the mass of falsehood with which the truth is invariably involved, which leads to convictions, by depriving prisoners of the benefit of doubts that in England would prove their palladium. But this never can be the case where the doubts are not only reasonable but unanswerable, and can any one affirm that the revenge or intrigues which have undeniably polluted this trial with the five perjured and discarded witnesses have not also corrupted others, whose evidence, although received, is of a character that is similar. I will conclude in the language of the Nizamut Adawlut in a case of murder and affray decided by Sir Robert Barlow and Mr. Raikes on the 15th of last month, in which they said: "In these depositions the Sessions Judge has placed implicit faith, and taken together as they stand in the record, they would afford, if trustworthy, a mass of evidence quite sufficient for the conviction of the prisoners. But it is impossible to allow oral evidence of this description to pass into proof, in this country, without testing its fidelity in some way, and judged by the proofs to which we have subjected it, much of this testimony becomes valueless in our estimation."

Mr. Montriou appeared in—

Defence of Meean Urjumund, Hajee Tamas, Meean Afreen, Meer Emam Ali (Urzbegy), Mirza Mahomed Hosein alias *Moghul Jaun (Naib Meer Munshi); read in the Court of the Sessions Judge of Moorshedabad, 7th September* 1853.

The learned gentleman spoke as follows:—

"The charges against the prisoners embrace several alternatives.

They are first charged with actually killing two persons named Hingoo and Muddee, under circumstances which constitute either murder or culpable homicide. They are next charged as being implicated in the same crime, which others have actually committed, so as to bring them within one of the descriptions شریک ماقبل اورمابعدوقوع جرم or راز داری

The prisoners are next charged with inhuman treatment or torture and beating of the same persons, without reference to their death, and the alternatives of اعانت and راز داری are added, in case their concern in the torture or beating be proved to come more properly under one of those descriptions.

The last count it is unnecessary for me to notice.

In the first place, I beg to note an important rule or precaution which the peculiar form of the record or nutthee in the Courts of the East India Company makes necessary, and which, on the same account, it is perhaps difficult for this Court strictly to observe.

It is this:

The *only* evidence which can be taken at all into consideration against the prisoners, is that which has been orally given in the face of this Court. What

has been deposed to before the Magistrate, or, as it is called, in the *Foujdarry*, has been used, and must still be used, to rebut and contradict, or in any way to discredit what the same witness has said here; but no statement in any *Foujdarry* deposition can legally or justly be treated as in evidence *here* against these prisoners. They must be convicted, if convicted at all, upon statements sworn to upon this trial, and in this place. Nothing in those depositions becomes evidence for the prosecution unless it be, in the same words, repeated by the witness upon his examination here. All else must be entirely dismissed from the mind of the Court.

The following is a short narrative or outline of the state of facts which the Government of this country, through their able and specially delegated representatives here present, have endeavoured (as far as it can collect their intentions from the evidence offered) to exhibit, by proof, to the judgment of this Court, in this case.

Towards the close of the month of March last, His Highness the titular Nawab Nazim of Bengal, attended by a numerous establishment and suite, computed to be upwards of 2,000 persons, was on a sporting excursion in the Maldah district. It would appear, that all His Highness' household, all the officers and mohurrirs of the numerous departments necessary or usual for the state or the wants of His Highness, accompanied him. In a word, the whole of the Court, household, and officers of the Nawab Nazim were transferred into the *lushkur* or camp to which we have now to direct our attention, as of course, a numerous tribe of omedwars, faqueers, mendicants and vagabonds of every class followed in the train and mingled among the crowd of this courtly but motley assemblage. Immediately attendant upon His Highness, and filling the principal offices, were the Meeans, of whom the chief in dignity was Aman Ali Khan, who appears to have been the general naib or lieutenant of His Highness. Under him, in various gradations, were the others, including the darogah or superintendent of the elephants and of the kitchen department, also the Urzbegy (who is not a Meean.) The main business of the expedition being sport, it was the custom of His Highness to quit the camp in the early morning of each day, accompanied by his more favoured associates and attendants, and to return to his camp in the afternoon or evening, usually about 4 or 5 o'clock. There were three principal tents or *kheemas*, viz, one for His Highness personally, one for Aman Ali Khan and one for the other Meeans, with whom also dwelt the Urzbegy, Meer Imam Ali, and Mirza Mahomed Hosein, known as Moghul Jaun, and described to be Naib Meer Moonshee. One morning, somewhere about 8 or 9 o'clock, and whilst His Highness and his usual suite were out, sporting on their elephants away from the camp, a small box containing money and other valuables was missed from the Meeans' tent; the box being in the special custody of one Hossainee, a slave or domestic *khawas* of the prisoner Meean Urjumund. Muddee a lad, the son of one Etwaree, *khawas*, of the Nizamut, was seized upon some ground of suspicion, and accused of the theft. Fear or remorse or both combined induced Muddee to assert that he could and would produce the missing property. He named an accomplice, Hingoo, a faqueer, who was thereupon also arrested.

Information given by Muddee to discover or trace the stolen property proved to be mere pretext, and this experiment was repeated several times. Nothing whatever was recovered or found. In the meanwhile, those who were in charge of the supposed thieves, as a means of extorting the truth, and exasperated at the repeated deceptions practised upon and the trouble given to them by their captives, punished the latter severely and subjected them to cruel usage, which at the end of some six or seven days caused the death of both Muddee and Hingoo. They were secretly buried in the jungle. The local police would appear to have connived at the crime; for it remained (notwithstanding its notoriety in the camp of His Highness) uninvestigated and unnoticed by authority of any kind until the return of His Highness from his sporting expedition at the close of April, when, the rumours coming to the ears of the Shahnugur darogah, steps were taken to bring the criminals to justice, which have finally led to and ended in this trial. The persons who are said to have committed such barbarity against the helpless slave-boy and mendicant, and who are now upon their trial, are,—the whole of the principal officers, the entire body of courtiers and dignitaries (so to speak) of the household of His Highness the Nawab Nazim; to whom are added, not as the mere servants' agents but as companions and helpers of the other defendants in their alleged cruelty, a mahoot and a camel driver, making in the whole thirteen accused.

Such seems to be an outline of the case supposed or intended to be made by the evidence which has been heard.—I say *intended*, because I do not believe that the Government prosecutors themselves can suppose they have supported the more serious class of charges—I mean those which assume that a criminal homicide has been committed—with even *primâ facie* proof. And here, I take leave to advert to what I believe to be a fundamental maxim and a guide in every Court of criminal justice where a British judge presides—I may say in every country of civilised and educated men. Every man is presumed and believed (judicially) to be innocent of a crime imputed to him until he is *proved* to be guilty: and by *proof* here is meant complete proof—evidence which leaves *no* rational doubt. In merely civil complaints, a case of suspicion is enough, if it be not met by answer and by counter-evidence, to warrant condemnation, but not so with charges of crime. Who ever heard of a British tribunal being satisfied with *primâ facie* proof against an alleged murderer? How infinitely various are the cases which may be supposed where to prove innocence of crime would be impossible, but where to impute or prove ground of suspicion is an easy task! But I am well assured that the maxim I have noticed will not be doubted here. If the evidence of guilt has not been satisfactory and led to an *undoubted* conclusion in the minds of the Court, I know that my clients will be, as they ought to be, fully acquitted. It does not, however, require the aid of this universal and well-established rule to clear the ground of the more serious crimes (as respects consequences) charged in this calendar; of which, as I have observed, a *primâ facie* case or basis of proof has not been offered. To establish homicide, the first essential and indispensable ingredient of proof is the cause of death. What pretence of proof has there been of the cause of death? Were it even possible that the Court could form any *definite* idea, from the whole

body of the evidence, of the nature of the injuries inflicted or said to be inflicted, still they have no data whatever from which they can connect those injuries with the death, as cause and effect. It would indeed be an awful responsibility were they called upon to do so. It is for the prosecutor, by his proofs, to connect them, directly and irresistibly : and not to leave the matter to guess or conjecture or possible inference. We have no *sooruthal*, no testimony whatever, medical or otherwise, of the state of the bodies of either when they died—(for the miserable equivocations of the bheestees Kangaly and Shikahdee throw no intelligent light upon this subject), no intelligible testimony of the commencement, progress or termination of any mortal disease, nor even of any injuries or ill-treatment from any particular person or persons which must have produced a mortal disease. However, it is enough for my present purpose that the cause of death is left in doubt. This fact alone precludes the possibility of a conviction upon the first class of counts ; and I infer from the fairness and honourable candour with which the prosecution upon this trial has been conducted throughout, that, had such a course been allowed by the practice and procedure of this Court, those counts would have been altogether abandoned upon the close of the case. As it is, I think it unnecessary, and that it would be trifling with the Court, to say more in refutation of them than I have said.

There remains the charge of torturing and beating the slave-boy Muddee and the faqueer Hingoo, and of being art and part in or conniving at that torturing and beating. Against this charge or series of charges it is my duty to defend five of the prisoners—1, Meean Urjumund ; 2, Hajee Tamas ; 3, Meean Afreen ; 4, Meer Emam Ali Urzbegy ; and 5, Mirza Mahomed Hosein, called also Moghul Jaun. As regards the 1st and 2nd, I think the evidence already in proof sufficient for their exculpation. For the others, I shall produce some testimony of collateral facts, which will assist the Court in coming to a conclusion in their individual cases respectively. The constant and uniform duties of the Urzbegy upon the person of H. H. the Nawab Nazim during this hunting expedition, extending as that attendance did regularly to a late period of each night, rendered his commission of the offences charged against him so nearly an impossibility, as to be, I submit, a sufficient refutation of whatever part of the charge might otherwise be considered proved. This attendance can, I believe, be satisfactorily proved, although the best evidence of the fact is obviously not procurable; it is either above our reach, or at the bar of this Court. The Meean Afreen, it is already in evidence (but from one witness only), although attached to the Nizamut household, is not connected with the personal establishment of His Highness the Nawab Nazim, and formed no part of His Highness' suit in this hunting excursion. He was accidentally present with the lushkur at Hyatpore and Purranpoor, but no further; having gone with message and condolences of the Begum, upon occasion of an accidental hurt which occurred to His Highness. This will be proved, and will assist in refutation of the attempt to implicate Meean Afreen. The Moghul Mirza Mahomed Hosein, against whom so much has been positively and recklessly sworn, is a person of great respectability, whose father and grandfather held office under the ancestors of His Highness. His duties are of a literary and confidential character, and upon this journey it was his particular business to be in attendance upon the Khan Sahib, Aman Ali. The nature and times of that attendance will be shown, as in the case of the Urzbegy, to be wholly inconsistent with the reckless and unmeaning conduct which the witnesses have charged him with.

Witnesses to general character will be called, especially to that of the Meean Urjumund, whose known benevolence of heart and conduct is such and so universally attested as to place him beyond the reach of calumny, except indeed from persons of the station and ignorance of those who are the pillars of this unfortunate, this memorable prosecution. He has ever been as much admired by the gentry and the wealthy who have been brought in contact with him, as he has been a friend to the poor and to the unfortunate ! It is a remarkable feature in the mass of contradictory testimony which has been heard upon this trial, that, although the witnesses have thought it necessary (for an obvious but short-sighted reason) to attempt in some way to implicate this prisoner in the facts which they came here to detail, they felt the influence of his general character sufficiently to qualify their falsehoods in various ways, and the same witness variously at different times, in favor of Meeah Urjumund and in favor of him alone. The most bitter of them has thus reluctantly defeated his own object ; for, I believe, that even taking each witness separately, untested by the damning experiment of comparison with his fellows, no criminal mind can fairly be imputed to Meean Urjumund, and all Courts have adopted the axiom of the Roman law *Nullus reus nisi mens sit rea.*—A criminal act cannot proceed from a harmless mind or intention.

Before proceeding to review the evidence in detail, it will be useful to consider the kind of proof by which a charge of this nature might be expected to be supported, so as to give it at least the semblance of truth ; which consideration will involve other probabilities and suppositions that will be found to bear most materially upon the case. The English law says (and I neither know nor can I suppose that either the Mahomedan *Sheraa* or the precedents of the Company's Nizamut Adalut say otherwise), that every fact put in issue in a Court of Justice must be proved by the *best* evidence, of which, according to its nature and character, it is capable. The fact or chain of facts in issue here is, whether the highest officials and intimate associates of His Highness the Nawab Nazim have or have not been guilty of murderous and wanton cruelty not as a general charge, but in a particular, specified instance, not for any purpose of ambition, revenge for personal dishonor or disgrace, from no motive of policy, but in wanton and palpably useless torture to extort a confession, and that not of a heinous crime or a crime which at all affected the persons inflicting the torture, but a confession of the theft of the private property of the only one of them who is not shewn (I am sure it will be admitted) or pretended to have taken an active part, by will or act, in the alleged torture. Again, the torture was not in secret nor under any precautions whatever (as far as has appeared) against detection, certain and prompt detection and punishment. It was in open day, in presence of some two thousand, many hundreds of whom were strangers to all parties concerned, and a still larger number, by station, habits, fears and hopes much more likely to sympathize with the sufferers than to screen the evil-doers. On the

other hand, this barefaced cruelty would appear to have been unusual and isolated. Not only is this the first criminal charge brought against the associates and officers of the Nizamut, since that name became a title merely and ceased to be the symbol of power, since the Nawab Nazim and the Moghul have alike ceased to administer justice (because they have ceased to have subjects): and—placed as they are in the trying and difficult, nay invidious position, of possessing the pageantry, the state, the outward homage of sovereign princes, but with the rights and the responsibility of the meanest subject, with no prerogative, no *real* privilege—it is matter of surprise that, in such a position, the household, the Court of the Nizamut, should not have become amenable to the visitations of British justice. Yet so it is. The crime now charged against them by the Government of this country is an isolated instance,—one little to be expected, and said to be perpetrated by the acts and sanction of a class of men of proverbially gentle and peaceable habits and demeanour, of whom the chief (so called) criminals have already received, out of the mouths of the witnesses for the prosecution, unhesitatingly, a character for integrity and humanity. Nor can it be collected or conjectured from the evidence, that any one of these, during the long interval between the commission of the alleged crime and the first official notice of it, viz., the information of the darogah of this city on the 30th April, acted in any wise as a guilty man, especially as one possessed of means and power would act. Moreover, fortunately for the cause of truth, the testimony offered contains intrinsic proof that no apprehension could have existed in the mind of any of the prisoners who had the power to influence, to corrupt, or to place out of reach the witnesses of the crime. No one witness has pretended that any such attempt has been made either with regard to himself or any other person. A vague remark, not amounting to evidence, was, I believe, made by one of the witnesses, imputing receipt of a bribe to the local police of the Maldah district; and I do not doubt that any of the others who came here prepared to testify to the presence of the police at the scene of crime (which was certainly the easiest mode of disposing of an obvious difficulty in the credibility of their general story) would have thought it fitting to guess at a like conclusion. This circumstance, therefore, cannot be taken to form an exception to the proposition which I have inferred and stated; and, in its favor, we have the presence and remarkable deposition of the approver, the servant of Meean Urjumund. We have too the *khas* servants of His Highness, over whose affairs and household, be it remembered, the accused Aman Ali Khan had undisputed sway, he being, to use the significant language of the herald, Hajee Nanha, مدار المهام. From these considerations, from these facts, are we not justified in making, are we not bound and compelled to make, the following deduction? Before men of the character and position of the principal defendants, including all for whom I appear, can be fairly or consistently with sound policy and good government *placed upon their trial* for offences such as those here charged against them, *respectable, consistent* and *probable* testimony must be adduced (because there exists no obstacle to its production, and it must undoubtedly exist,) worthy of belief from its own intrinsic weight, irrespective of the chances or possibility of refutation, and further corroborated by the probable certainty, that, if the testimony be false or exaggerated, undoubted means exist of exculpation, without let or hindrance.

That this deduction, this axiom I may say, is the more imperative to guide our judgment in this case, because we are wholly dependant upon that most frail, most dangerous of instruments in this country, that will-o'-the-wisp to the administrators of justice—oral evidence. We are *wholly* without circumstantial evidence of any kind. For even the geography of localities, for every fact, for every link of every fact which is to be part of the chain, I do not say of condemnation, but of suspicion against the prisoners, we must look to and depend upon fleeting words and still more fleeting memory; to them *alone*, without any other aid, any circumstances or indicia *which cannot lie* whatever. We are told that the men are dead, we are told of rumours why they died, we are told, in many and various and strange descriptions, of their treatment and conduct some few days preceding the alleged date of their alleged decease, we are told, of the supposed reasons and motives of that treatment; but who in this Court *knows* (putting aside admissions of the prisoners of which none are in evidence here), that such men ever even existed? Assaults and personal injuries to the living are proved in Courts of Justice by those who suffered them: homicide and death are proved by the production and judicial inspection of the body. I do not mean to say, that this normal rule can *never* be with safety departed from; far less do I intend to base the defence of my clients upon any denial of the existence or the death of either Muddee or Hingoo. It is wholly unnecessary, and therefore inexpedient that I should do so. A great English criminal judge and lawyer, Sir Matthew Hale, is well known to have made and adhered to the rule, never to permit a conviction of murder where the body, as the best proof of the *corpus delicti*, was not forthcoming. This rule has since, in special cases, been departed from by the English Courts as well as by the Company's Nizamut Adalut. My object in now alluding to this defect in the present evidence is, to illustrate the great difficulty that the Court must necessarily have in satisfying their conscience even upon the broader, notorious, and easily tested facts of the case, without other guide than oral evidence. But how much greater and more serious is the difficulty, when the facts to be proved are dependant upon, not merely honest but minute and careful observation and attention, upon not merely honest and unbiassed but sure and intelligent recollection!

Let us then make some enquiry into the intelligence, the respectability, the consistency, and title to this great confidence (which they must be entitled to, in order, not only to attach even suspicion of guilt to my clients, but, to divest this remarkable prosecution of a character of rashness and impolicy unexampled even in the history of British India) of the persons from whose mouths the oral evidence proceeds. And first, who are the witnesses *relied on* (we need not now refer to those precious morceaux, those examples, remarkable not for their rarity, but for their perfection as examples, of audacious and seemingly unconscious mendacity, whom the public prosecutor has not less judiciously than honorably rejected from his proofs) in support of this prosecution? They are fifteen in the whole, viz.:—

Two faqueers or beggars, one of them a leper.

One approver, the khawas or slave from whose cus-

tedly the yet missing property (which Muddee and Hingoo were accused of stealing) was lost.

One teeka scullion.

Five menial attendants of H. H. the Nawab Nazim, viz. a batta burdar, a peon, a tailor, a chobdar, and a nukeev or herald.

Then, one Christian, and certainly respectable witness, H. H.'s coachman.

A teeka gram-cart driver, employed under the coachman.

Two of the camp bheesties.

An ignorant helper to a person said to be employed as the coberaj of the camp; and lastly—

A Meean, who is the deputy and mosahib of Aman Ali Khan. He completely exculpates the latter, and shows no disposition to affect any of the Meeans by his evidence; but he is evidently called because he is not unwilling to make a scapegoat of the Moghul prisoner.

Now, it is not an unimportant fact that these fifteen are selected from an enormous mass of lengthy depositions in the Foujdarry, comprising more than one hundred witnesses, of whom sixty-eight are in the calendar. They are the cream of the collection—a collection made of course by the efforts or under the auspices of that darogah who distinguished himself by his report of the "bazaar rumours" on the 30th April—rumours which, as he then said, accused no one and had no definite form, but which, between that date and the commitment for trial, some six weeks since, have ripened into the definite and intelligent testimony of these fifteen witnesses. And what have these witnesses told us? Have we heard from them one consistent tale, or one tale with unimportant variations? Do they all, or any fair proportion of them who profess to have witnessed the same evil deeds—above all, do they inculpate the *same* persons as the doers of those deeds, or do they vary in *this* respect in a manner impossible for honesty to vary? Is there mixed up with possible truth impossible falsehoods or inconsistent statements as to matters for which the witness was unprepared? Has or has not each witness his evident bias even on comparatively unimportant parts of his story, showing the danger of confiding in his meditated account of what vitally affects the questions at issue? To the presiding judge and to the Muftee I might with propriety and confidence put these suggestive questions, without actual reference to the details of that evidence which they have both so carefully noted, and have doubtless already most attentively weighed: but I proceed to note and compare a few of these details.

Dhunnoo Sheikh, the beggar who carries the hookah, and who leads the van of the elect fifteen, saw, at noon of the first day, the two victims tied by their feet to separate tent pegs, on their backs, with their hands bound behind. At this time the Meeans, Afreen, Belall, Ekball, Hajee Tamas and the Moghul (whom he confounds with Meer Emam Ali, the Urzbegy) the mahoot and the mysterious Burra Sahib (whom all implicate, perhaps because he is absent) were present and in some way encouraging the *zulm*. He next sees the young khawas taken to the river by *sepoys*. After the return from the river, His Highness returned, viz, about 1 P. M. The suspected thieves are summoned before and are taken to His Highness by Aman Ali Khan personally. His Highness interrogates them. The Khan Aman Ali threatened their lives, before his Highness, who ordered their release, which order is countermanded by the Khan. Witness, on the 2d day, saw Muddee tied, on his back, as before; but Hingoo was sitting, torn and bleeding. The day after, the boy was seen to have been burnt all over his body. They were taken, in two majhoolie gharries, to Alall. Witness helped to dig the grave of the boy, where were present at the burial, besides the two bheesteeas and this witness, Burra Sahib and Sheer Ali faqueer. This witness saw all the Meeans engaged in beating.

Hingun Khan, the leper, saw the two men tied to the tent-pegs, not of the Meean's tent, but of Aman Ali Khan, three or four ghurrees before the Khan returned with his Highness from shikar. The Meeans and a great crowd were there. The only beating which this man professes to have witnessed was inflicted by the Khan personally at his own tent, and he evidently implies that the victims had not been beaten at all until then.

Hosseinee Sheikh, the approver, gives his version of the loss of his master's box. He of course disclaims the slightest interference in or encouragement of the maltreatment of the suspected men. This slave represents, the Naib 'Meer Moonshee and Burra Sahib, men who were the companions and equals of his master, as being so terrified with his (witness's) insinuations and accusations, when he awoke and discovered his loss, that they forthwith set about hunting the camp for a thief whom (as he now professes to believe) they falsely accused. He represents himself as paralysed with fear, and either wholly unwilling or unable (from his state of utter prostration) to take any steps or render any assistance whatever. Yet this trusty menial acknowledges, that during his eight or nine years' service with the Meean Urjumund, he has not known or heard of his master being guilty of a single act of violence, and although he received not a single reproof from his master at Purranpore, his state of *bud-hawas* continued at Alall, which he gives as a reason for not having seen the suspected men or knowing anything about them at that place. He alone remained inactive, he, who knew and felt how much his own *izzat* at least was concerned in recovery of the property (to say nothing of his duty or gratitude to his master), he alone was tender-hearted and silent! According to this man's account, Muddee (after Hingoo being brought) was taken, before the return of the Meeans and His Highness, on the first day, to the river and to the modee's shop. After His Highness' return, they were taken to a garden or plantation, on which occasion the mehter is first introduced. He denies that they were taken to the tent of His Highness or of Aman Ali Khan. He describes them as having been bastinadoed, whilst tied with their feet up and head downwards. In his evidence here, he distinctly implicates his master as approving of the beating. On the journey to Alall, according to his account, one thief was taken in a palky, the other in a cart.

Perhaps the most remarkable feature in this wretch's evidence is, the mean attempt to implicate his master, whom he distinctly exculpated before the magistrate; but he was probably not aware, when he made his foujdarry deposition, of his master having told the magistrate, as the truth was, that this very man, his own servant, informed him, upon his arrival in camp, of the loss of the box and of the capture of the suspected men (one of them, Hingoo, by Hossainee himself), whereupon the Meean Urjumund, upon hearing the

ineffectual attempts to trace his property, ordered the release of the prisoners. This man's testimony bears upon its face, to my mind, the consciousness of guilt, and that his only hope of escape is, by corroborating the case made or supposed to be made against all the prisoners.

Ruheem Ali, the teeka cook or scullion, is a travelled man, who has studied divers arts in divers climes; and it would appear, that we are indebted to his former master, Mr. Porter, (whom this witness asserts to be in his debt for all he earned besides money advanced during his two months' service) for the haphazard testimony of this extra cook's mate or scullion. According to this man's account, Aman Ali Khan was with Urjumund when they jointly enquired "What tamasha is this?" And then, *i. e.*, immediately on alighting from their elephants, the former gave the order to beat. The suspected men were then, *i. e.*, after the return of his Highness, taken to the river, and from the river to the bazaar, where they were beaten, in the presence of a crowd, and ordered to be dragged by their feet. His account proceeds, that, on the second day, the men were taken to a kuddam tree. It is this man who describes an occurrence contradicted by all the others, viz., that Aman Ali Khan before going to shikar in the morning staid back, suffering the Nawab Nazim to proceed alone whilst he went to the tent of the Meeans to give orders for beating the captives; who, thereupon, were brought out and beaten by Joomun, by Peeroo mahout and by the mehter. (By the way, where is this mehter, who has been several times referred to, although at different times by different persons?) He describes a search and a diving process in a small boat, not spoken to, that I am aware, by any other witness. This was on the third day at Purranpore. It was just after this description that the witness added "teen duffur ya halut hoa," which would appear to have been the index, in his own mind, of the several searchings and bringings back to which he had to depose, and accordingly had deposed.

The pert and over zealous manner of this man in the witness box must be in the recollection of all who were present. How he overlooked the sheristadar when writing his words, and how on one occasion, when he had delivered himself of what he considered a telling fact or opinion, in his anxiety to proceed, he asked of the writer "licka ap?" The manifest and important discrepancies between his foujdarry deposition and his evidence here being pointed out to him, he unhesitatingly disavowed them and ascribed them to the writer. I request of the Court, whilst considering their judgment, not to omit making this comparison, which will alone remove all doubt (should any remain in their minds) of the utter worthlessness of this teeka vagabond's testimony. He was on the look out for a teeka job, and he has found one, doubtless as well suited to his antecedents as to his taste.

We next have Jhingoo Khan his Highness' pandish bearer, who must often have attended the Meeans, or at least in their presence, as the constant guests and companions of His Highness. Little could they, or indeed any of His Highness' household now at the bar of this Court, have expected to see this familiar attendant arrayed against them. But so far has the ingenuity of those enemies who have contrived and originated this baseless persecution (who will, I fervently trust), as I believe they will (ere long be discovered and meet with at least a portion of their deserts) triumphed! The old familiar faces, not indeed of persons of station or respectability (I use this word rather in its conventional Bengalee than European meaning and sense), but the menials who have obeyed their slightest nod are brought here. There is something unusual and remarkable in this. One inference from it I have already drawn. Another is scarcely less obvious. These men must have been taught, and lately taught too, that the sun of these nobles of the Shahnagur killa has set, that they have nothing to fear from their frowns or to hope from their good-will. But little acquaintance with the Asiatic mind is needed, to trace and deduce how it is, that these men are found, at the bidding of the British Sircar (through that strong arm of its power, not always righteously used—the Mofussil Police, the herd of nazirs, darogahs *wo gheirah*) bearing testimony, unthought of and unsuspected, against persons whom their young prince and master certainly does not, because he cannot with truth, accuse, but whom he, as certainly, may not assume to protect—although I do not and cannot doubt that he smypathizes with them in the strait to which they are now, I venture to say most unjustly, reduced. This man, Jhingoo Khan, relates the visit to the indigo factory, between the hours of 9 and 10 in the morning of the second day, when he particularizes, the moonshee Moghul Jaun, Burrah Sahib, and Joomun as the conductors of the elephant upon which Muddee was bound, and the Meeans, Musserut Ali and Afreen, as following at the distance of an arrow's flight—a fanciful measurement, but not difficult of comprehension, as a watching distance. A remarkable statement by this man, both in the Foujdarry and here, and quite inconsistent with all other testimony to the same circumstance, is, that Muddee was brought back from Noghurrea on an elephant, not on a camel. In the Foujdarry he added, that Moghul Jaun and Burrah Saheb were seated on the same elephant,—a still more serious discrepancy. The two depositions otherwise materially differ, and, after his former deposition was read to him, this witness, nothing loath to abide by the fuller statement, declared "what I said before the magistrate was true"; but he nevertheless admitted, that what he said respecting the cause of death was from rumour only.

Next, is the evidence of George Shopcott, a witness, to my mind, undoubtedly credible, as far as integrity and absence of corrupt motive is concerned. Indeed, I by no means object to this man's testimony being used as a lever, a touchstone, to raise and to test the mass of incongruous statements with which the prosecutor's tale is incumbered. How much doubt, exaggeration and falsehood will thus be dissipated; although Shopcott's experience travels but a part of the weary journey of the alleged seven days'-cruelty! From him then we learn, that a *bonâ fide* search for stolen property was made at Noghurrea—that the lad Muddee was taken there—that upon his, apparently false information, the witness Jungloo was seized and would have shared the fate of Muddee but for the interference of Shopcott—that this interference was nothing more than the use of Aman Ali Khan's name, which effectually staid the meditated injustice of punishing before proof or sufficient enquiry. We hear of no retort from the camel driver, that the Khan had *ordered* the boy to be beaten; we learn also from this witness, and it is an important fact as bearing upon the testimony of others, that the boy Muddee retracted his accusation

of Jungloo *at Noghurrea*, and transferred all ground of suspicion to two byes or nautch girls at Purranpore; we learn that no person of authority (and Moghul Jaun or Burra Sahib would have been such) were present with the boy there, that the camel driver was the only one of the prisoners whom he saw beat; and, considering the station, ignorance, and habits of this camel driver, he surely cannot be very harshly judged, for administering some correction to a boy who had admitted himself a thief of valuable property, and was palpably trifling with and imposing upon the servants great and useless labour, in an apparent spirit of wantonness (for I know not what rational motive to ascribe). Which of us would expect his jemadar or syces to act with leniency or philosophical forbearance in a similar position? The jemadar accused by Shopcott, is, for some unexplained reason, not here. Shopcott proves, that all this happened on the morning of the 28th March, viz., the seizure and release of Jungloo, (for he distinctly says the boy's accusation of the latter was after or at least during the beating) and, as I understand him, the arrival at Noghurrea of the camel which brought the boy. We are assured from his evidence, that the boy did not return to Purranpore on an elephant as insisted on by the pandish bearer. From a subsequent part of his evidence we find, that the coberaj, Joomuck, and the mother were for some time administering remedies to the captured men—that no one of the prisoners at this bar (excepting the camel driver in the manner mentioned) took any part or concerned themselves in the matter, so far as this witness knows (and is it possible he should not have known, if a tithe or a modicum of the stream of testimony from others, were *not* false and wilfully false?)—that both men were buried under a cotton tree in the maidan, within view of the stables, early in the afternoon of two consecutive days. Although the evidence of this witness not only does not implicate, but, upon the whole, is clearly exculpatory of my clients from any share in or conduct or sanction of any ill-treatment whatever—for the circumstance, that the accused men with the Khawas Etwarree were living in a *pal* or mat shed three or four yards off (such is his evidence) from the Meean's tent, can surely warrant no *conclusion* against the innocence of the Meeans, that they were necessarily art and part in any injuries sustained by or inflicted on those men—I must yet comment on that part of Shopcott's testimony which shews the condition of the bodies of Hingoo and Muddee when he saw them under the pal. He describes the skin being off different parts of their bodies, also swelling—*no injuries to the face* or head, no wales or cutting up of the flesh, no ulcerous openings, no pouring out of blood or matter from wounds. Now what must be the deductions from this evidence in a judicial mind?

I submit they are:

1. That injuries of a *more* serious and less superficial character than those seen and described by the witness could not then have existed.

2. That much of the appearances described may have been the result of unskilful medical or surgical treatment.

And how much are these positive and necessary inferences corroborated by comparison with the deliberate testimony of some of the others? The teeka cook's mate says, "only the eyes were visible, all the rest was one bruise." By some, their hands are described to have been frightfully lacerated, and they were burnt with hot gools. Are then the accounts of the cruel beating and torturing and their effects supported or contradicted by Shopcott's description? He shews no disposition to keep back or to hesitate in describing or to soften down his recollection of the state in which he saw them. He speaks of it as any humane man would, upon whom what he saw made a strong impression, and who would therefore be likely to give a somewhat coloured and unintentionally biassed view of the object seen. He in effect disproves the circumstantial descriptions of wounds and ill-treatment, variously and in contradictory terms certainly, but generally spoken to by the low native witnesses.

The hurkaru or peon Doololl returned with Muddee on the camel from Noghurrea to Purranpore. He speaks to a carrying to the river side on (I think) the second day. He describes the two to have been tied by the tent with their hands bound together, but their feet at liberty; he saw them *slapped* and *kicked*, *not* beaten with *sticks*, by the Urzbegy, by the Moonshee, Burra Saheb, Joomun and the mahoot.

This man's evidence needs no comment; it would seem to be an indifferently selected portion of the camp rumours; and he does as little for the cause which he is called to support as he well can: indeed, his silence as to much, which is said to have been notorious and manifest to all, would be unaccountable, upon the hypothesis, that either the gravamen of the charge itself, or of the varying circumstantial statements in its support is or are mainly true *as stated*.

That the chobdar, Ghasoo, has belied himself, and come forward also with *his* portion of the camp rumours, *or* that Ameen Ali the *nukeev*, is a pretended witness of what might or might not have happened, is an obvious and an insuperable inference from a simple test, for which neither of them were prepared. Ghasoo relates a plausible story of his accidental presence under the kuddum tree, near the tent of Aman Ali Khan. He was sick, he bathed there, and was openly and continuously there during the day.

The nukeev had his bister also under the same tree, but he knows nothing of the chobdar; indeed he positively denies that he was there during the intervals when he came home for his meals and rest, and when not parading the camp or the bazaar. At all events they each speak to the taking to the river side, circumstantially. This fixes the *time* of the presence of each under the tree. Can there be any reasonable doubt that they both *intend* the same tree? Can there be any doubt, that if several native servants had their bisters at that tree, and were simultaneously looking on at such a scene as they describe, each would have been able to speak to the presence of the other, especially as there was something special in the presence of the chobdar, also in his condition and occupation? The fact I believe to be, that the nukeev hazarded the answer that he was under the tree, little thinking why he was asked. I may almost say, *Utrum horum mavis accipe*. In truth, it is impossible (without looking to other discrepancies or objections to their evidence) that *either* of these men can be judicially relied on. It would indeed be a hazardous responsibility to have to guess or to calculate *which* is to be rejected, *which* is the real Simon Pure.

The only remarkable feature in the evidence of the carter Junglee Sheikh is, that it materially contradicts the trustworthy evidence of George Shopcott,

as to the occurrences at Noghurrea; a fact which must be in the recollection of the Court. This testimony therefore needs no comment from me. The same objection applies, but not so strongly, to the deposition of Hajee Nunha. This man implicates a new asamee, the Mushruff Jeewun Lall. He recollects the remonstrance of the wounded Meean Hajee Tamas. At Gujol, he deposes, that Muddee complained to his father that his body was burning—that Muddee was attended by the coberaj and a brahmin who gave him, not plaster or ointment or poultice, but internal medicine, something to drink and *pills*.

This man says that, on the road to Alall, Hingoo travelled in a *meeana*, Muddee on a *ruth*. He describes the marks on Muddee's body at Gujol to be those which we had seen at Purranpore, viz., marks of korah and caning. Statements as of fact made by this witness in the foujdarry he now acknowledges to be hearsay.

The evidence of Meeah Ameen shews *inter alia* that there was nothing remarkable in Etwarree's having a pal pitched in the neighbourhood of the Meeah's tent. He distinctly contradicts those who implicate Aman Ali Khan or the other Meeans or the Urzbegy, and he speaks, as others do, to the prevalence of cholera in the lushkur. I think it quite unnecessary to remark upon the evidence of the bheesties and of the cobraj's servant, Bhuggoban Ghose; feeling satisfied that no impartial mind can build condemnatory conclusions against my clients upon anything that those three have said, collectively or individually.

Such then is a cursory review of the proofs, or of what are substituted for proofs, in this most serious and most extraordinary case! In the name of justice and of common sense, what definite or intelligible tale of guilt do they reveal, or can there be extracted from them? Are these miserable equivocators, these paupers and menials—the select from the 2,000 of the camp and from the mass of the foujdarry deponents—the "best evidence" procurable in support of charges of this nature? If the public prosecutor thinks that they are, I call upon him to shew how and why they are. It is a scandal and a shame, it is a grievous wrong to the amiable young prince whose servants and companions they are, that my clients should be called upon to undergo the disgraceful ordeal of a public trial, should have suffered months of anxious incarceration, should (for their necessary self-protection) have been put to great charges, upon such paltry, contradictory, inconclusive, such impossible testimony as this—to suppose that they can be *convicted* upon it would be monstrous! Not one of them (Meean Urjumund, Hajee Tamas, the Urzbegy, Meean Afreen or Moghul Jaun Monshee) deny that the two men were, or rather might have been for all they know, beaten (but by no means to the extent pretended); not one of them saw or sanctioned that beating, not one of them had any cause or assignable motive for doing so—neither of them made enquiry about the deaths of these men, or had reason to do so. Such information as they subsequently obtained was from the rumours of the camp or from the mouth of the accomplished, the rejected doctor Joomuck; and here I would digress to observe, that the discrepancies and contradictions which have proved fatal in the eye of the public prosecutor, to the credit of five of his selected witnesses, by no means betray an anxiety to defeat the prosecution. Those men have not served or answered the purpose as expected; they have proved their own worthlessness, that they have deliberately sworn falsely either here or in the Foujdarry or in both places; but their evidence here, as conclusively, proves that they are hostile, in thought and intention, to the prisoners at the bar. The inference is irresistible, that they are members of a conspiracy; they have only been less skilful or less fortunate than some of their companions. What more need I say upon the general complexion of this case? I have endeavoured to insist upon and to argue the general rules which should be brought to bear upon its consideration; and I have cursorily adverted to some, but only some of the palpable defects and discrepancies (the public prosecutor will in vain strive to show them to be *honest* discrepancies) in the details of the evidence. One remarkable head of discrepancy, shewing the gross carelessness as well as untruthfulness of the witnesses—one which must have made a deep impression upon the minds of the Court, I do not think I have specially noticed: I allude to the description of the manner in which the men Hingoo and Muddee were conveyed from Purranpore to Allal.

I have also yet to observe upon one very prominent and remarkable fact, or rather an omission which involves many facts, in what I may call the forensic history of this prosecution. Etwarree, the father of the deceased boy Muddee, who attended his dying moments, who nursed him during his mortal sickness, who procured medicine for his child, and was found weeping at the entrance of the pal—this man has not been examined, nor has his absence been in any manner accounted for. We have heard from the witnesses that, with one trifling exception (mentioned I think by the slave Hossainee) no complaint or remonstrance was made by Etwarree at any time, not a word is breathed of his attributing Muddee's mortal sickness to maltreatment of any kind, although he was the khas khawas of his Highness. We hear of no coaxing, no threats, no presents, which if they existed or occurred, must or might have been proved here. The Court surely are not to be asked, on such a trial as this, to have intuitive knowledge of *facts*; and nothing but the existence of some collateral independent facts not before the Court, and which have no reference to or connection with anything in proof, can render this man's absence, and still more his proved silence and unmurmuring submission to the calamity which befel his child, other than unanswerable and incurable defects in the affirmative proof by which alone the case for the prosecution must stand or fall.

Guesses and conjectures cannot, *legally* or *justly*, by any juridical principle or any *principle* at all, be admitted or stand in the place of any part of that affirmative proof. Of course it may be said, (as a prosecutor in such a dilemma always must say) "Oh! if Etwarree considers or knows that his son was *not* ill-treated, why do you not call him in your defence?" The principles upon which I have already insisted are a sufficient answer to any such query. I am not here, on behalf of either of my clients, to prove innocence; but to shew that you have not proved guilt. You have not produced that sort of evidence, either in character or in detail, which can lead the mind of a Judge to a safe conclusion—you may have given him enough to suspect something against somebody, but not to condemn any particular person or persons, certainly not those whom I defend, of any defined mis-

conduct. In no Court of Criminal Justice where an English judge presides, is the Judge obliged to arrive at *any* conclusion the panel *may* be guilty or innocent. The Judge has merely to do with the proofs of ascertained and definite guilt. Moreover, in this case each of the principal defendants is deprived of what would be the most likely and the most credible evidence of his not being amenable to the charge preferred. His bhae bunds, his companions, those with whom he lives, who know his ways and his habits; because they are all by his side, suspected criminals like himself. With how much more reason and intelligible ground of suspicion might several of the witnesses have been substituted in their place—the faqueers who virtuously declined the invitation to beat which the other 300 faqueers accepted —the tender-hearted slave who made no efforts to recover the treasure so unaccountably spirited away whilst he was sleeping—at a time by the bye, when, if at any time, he should have been awake, viz., immediately after his night's rest!

Where, under such circumstances, would be the wisdom or the discretion of attempting, by testimony, to disprove what is not proved?

As to Etwaree, I know nothing and wish to know nothing of him. I am told he was examined in the Mofussil—if so, his deposition will be with the nutthee, and I do not object, nor do I suppose the learned defender of other prisoners will object to that deposition being looked at. Had its contents fitted the case for the prosecution, doubtless the deponent would have been, like the others, committed to the *care* of the Police Nazir, one of whose duties throughout the Mofussil of India I understand to be, to act as the whipper-in and custodian of witnesses!

I would add a few words with reference to the Naib Meer Munshi, the Moghul prisoner. This man's case is peculiarly hard. Neither from cast, kindred, or occupation, has he the sympathy of those classed with him. It must have been observed by all who listened to the evidence, that each of the witnesses had a disposition to screen or to tread lightly upon the reputation of some one—each I mean of those attached to the Nizamut; and doubtless had the Meer Munshi himself, Baboo Brijomohun Doss, been on my friend the public prosecutor's list, he would have had some reluctance, with whatever impressions, recollections or disposition otherwise he might have come here, to represent his deputy not merely as a thief-taker, but as the servant, tool and executioner of thief-takers.

As it is, he has been recklessly named, and he, together with the absent Burrah Sahib (of whom I know and can say nothing) have been, as it were by common consent, brought in on different occasions as scapegoats, or at least as useful adjuncts to make the case complete. As regards the Meeans themselves, I can be at no loss, when I see the favors and distinctions heaped upon them by their princely master and benefactor, to understand, why and how they have been so wickedly implicated in a transaction which, if it occurred, and whatever its character, was the work either of their drudges and menials or of the 1,000 vagabonds, faqueers (doubtless always ready for excitement or *hinguma* of any kind) with which the camp was infested. I am not bound to define, because it is not, as I humbly but earnestly submit, within the province, much less the duty, of this Court—if they are not perfectly and conclusively *satisfied* that the guilt of any or either of my clients has been legally proved—to define in their own minds any conclusion or probabilities whatever. The certain knowledge of truth is not given to man. The rules by which the courts of enlightened nations endeavour, if not to arrive at truth, at least never to come to a mischievous as well as an untruthful conclusion, are defined. Forensic judgment is a science, and it is indispensible that it should be so. But, were I asked what moral and extra judicial conclusion my mind arrived at from this evidence, I should say,—those two men have been maltreated by some persons who believed themselves justified, in consequence of the suspicions attached to them, and of their conduct under those suspicions: the subject formed the common topic and rumour among the faqueers, menials and followers of the lushkur; and the accounts given here amount to evidence of those *rumours* merely and not of any *facts* at all. Not one witness (excepting always the Christian coachman whom I accuse only of involuntary exaggeration) has been an eye witness of what he pretends; but *some may* have seen enough to sketch or picture a tale, upon sufficient encouragement, the outline being filled up and the picture coloured by the gup of his fellows, during the *sufur* and perhaps yet more during the dangerous proximity to his co-witnesses *enforced* by the system of the Mofussil police. I consider that the treatment, the wounds, the conduct have been all palpably and grossly *misdescribed*, not merely exaggerated. As to the deaths, there is at least a strong moral probability that the rumour of the death by cholera may be correct as to one if not of both: if it be otherwise, I should say no man can draw any conscientious conclusions whatever *from the evidence*. All is vague: it is lamentable that it should be so,—but how much more lamentable would it be, that in order to arrive at an affirmative judgment, we should venture to condemn even the meanest of our brother men upon conjecture!

The following is the reply put in by Mr. Trevor and Shumbhonath Pundit, conducting the Prosecution on the part of Government.

September 7th 1853.

Before proceeding to offer the remarks we may consider it our duty to make upon the case in general, we would wish to express publicly the satisfaction we have received from the testimony borne by both the learned Counsels for the defence to the manner in which the prosecution has been conducted by us. It has been our endeavour to conduct the case with the spirit of fairness towards the accused, and it is a pleasure to us to learn that in this attempt we have not been unsuccessful. We also beg to be allowed to add our testimony to that of the learned Counsel for the defence to the great consideration that has been evinced through the course of this trial by the Court towards the accused. Mr. Clarke, the learned Counsel for five of the accused, Aman Ali Khan, Musserut Ali Khan, Jowahir Ali Khan, Meeah Ikbal, and Meeah Belal, has contented himself with calling witnesses to character. We have, therefore, only to beg the Court to bear in mind that where the point at issue is, whether the accused have committed a particular act, evidence of their general good character is obviously entitled to little weight unless some reasonable doubt exist as to their guilt. There are one or two facts given in Mr. Clarke's defence which do not exactly correspond with the evidence as taken down by us. For the clearing up

of these discrepancies we shall have to ask you to refer to your notes after we have finished this reply. The other learned Counsel, Mr. Montriou, defends five of the accused, Meeah Arjoomund, Hajee Tomash, Meeah Afurreen, the Aruzbegee Imam Ali, and Mirza Mahomed Hossein, *alias* Moguljan. For the two first named the evidence given in defence is evidence to character. The defence for Meah Afurreen is that he was not a servant of the Nawab at all, but of the Nawab Begum, and sent by that lady to his Highness with a letter of condolence after the occurrence of some injury to his Highness's person. The defence of the Aruzbegee Meer Imam Ali is that his duties were of such a nature as to keep him so late of a night with the Nawab as to render his participation in the perpetration of the crime charged nearly an impossibility. The defence for Mirza Mahomed Hossein is that his particular business was to be in attendance upon the Khan Sahib, Aman Ali, that the nature and times of that attendance were such as to be wholly inconsistent with the conduct attributed to him by the witnesses for the prosecution. The defendant Furreed Khan denies the charge of having beaten one of the deceased and calls witnesses to prove his defence. The defendant Joommun Sheikh sets up an *alibi* as his defence but calls no witnesses to prove it. The defendant Peer Khan, who confessed before the Magistrate, denies before this Court, but calls no witnesses.

Before proceeding to notice how far the several defendants have substantiated their respective defences we have a few remarks to offer upon the case generally. The first thing is that the matter was first reported by the Shahnuggur Darogah as a rumour. We submit that it was natural it should be so. The crime was not committed in the Moorshedabad district at all. On the return of his Highness from the hunting expedition the rumour naturally began to be rife in the city, and it was strictly the Darogah's duty, as laid down in Section IV., Clause I., Regulation XX., of 1817, to make the report he did. Another point requiring notice is the retinue that accompanied his Highness upon this occasion. The learned Counsel for the defendant, Arjoomund and others, would seem to suppose that the whole Court of the Nawab accompanied him in this expedition, but this nowhere appears in the record, nor is it natural that it should be the fact. It is more natural to suppose that on these occasions his Highness would lay aside some of his usual state, indeed one witness Mahomed Ameen distinctly deposes to a not unimportant fact, viz., that all the Meeahs except Aman Ali dined with his Highness every day; Aman Ali only doing so occasionally.

The next point to be noticed is the evidence adduced for the prosecution. The witnesses we have considered our duty to produce have some of them been subjected to such a cross-examination as we will venture to assert has seldom been heard in our native Courts of justice. They have been questioned not only on points bearing on the case but on matters quite irrelevant. They have been in the box, some of them a whole day; one man a day and a half, and after all what contradictions have been elicited from them? Very few we maintain on any material point, and all the contradictions are of such a nature as to prove rather the truth of the main story than that these men have leagued together to bring punishment and disgrace on the heads of the accused. We appeal to the demeanor of the principal witnesses in the box as a proof that what they deposed to was in the main true. The Counsel for the defence, Mr. Montriou, admits the cool demeanour of one, and attributes it to pertness and over-zeal. We assert that it is ridiculous to suppose that these faqueers and menials should have stood the cross-examination they did and in the manner they did had their evidence been founded on a lie. The leper, the itinerant vendor of smoke, the "ticca scullion," (also called the ticca vagabond) the tailor to have in a great measure, if not entirely, baffled the efforts of two Supreme Court barristers is a proof to our mind not of the want of talent in the Counsel but of the support the witnesses had in the knowledge that they were in the main speaking the truth. They differ as to the time of the several occurrences it is only natural that they should. Months have elapsed since the occurrence took place, and had they all agreed as to time we should have heard that such "unanimity was wonderful." They differ as to the mode in which the two deceased persons were conveyed from one place to another. Of what consequence is a discrepancy on such a point as this? We are told of conspiracy. Where are the conspirators? Would not any one conspiring have brought forward witnesses of a superior walk of life to those adduced for the prosecution? Would his Highness have continued in his service up to the present time (as he has several of these witnesses) parties conspiring to bring ruin and disgrace upon a man high in his favor and service? The poverty and low state of the witnesses for the prosecution have been much insisted on by the learned Counsel for the defence. We glory in them, they are our strength. It is stated by the learned Counsel for Urjoomund and others that in all cases the best evidence is to be given. To this axiom we assent; but venture to think that in his application of it the learned Counsel is in error. The axiom refers to the evidence, best in *quality* not best in *strength*. We assert that in quality no evidence can be better than that produced for the prosecution, being as it is the evidence of those who profess to have seen with their own eyes the facts they depose to.

The next point calling for notice is the non-appearance of the father of the deceased Muddee. This is a thing of frequent occurrence in this country,—so frequent that as long ago as 1822 a Regulation was necessary to authorize the punishment of parties when in cases of murder the heir of the slain refused to prosecute. We are confident that to this fact no weight will be attached by the Court, especially when the accused are, as one of them in the present case is, men of wealth and influence. The next point to be noticed is the evidence of the English coachman in the service of his Highness—George Shopcott. Both the learned Counsel for the defence mention in terms of commendation the manner in which this evidence was given, and we are also ready to agree with those gentlemen. This witness implicates only one of the defendants as actually beating; but his evidence is very strong as to the state of the bodies of the deceased shortly before death at Gujol—the only place that he saw them after he had seen one of them at Nougurreah; as at Purranpore he was encamped on the other side of an indigo factory away from the rest of the Lushkur; and at Alal on the other side of the river. His description is borne out as to one of the deceased Hingoo by the two bhistees, who brought water to wash the body, and whose evidence, with due deference to the learned Counsel, Mr Montriou,

we consider in every way trustworthy. This evidence has, we presume, put an end to the defence set before the magistrate that the deceased died of cholera, and we moreover beg to remark that not one single witness deposes to the *prevalence* of cholera in the camp as stated by Mr. Montriou. The number of persons in the camp were as far as appears about 2,000, and during the two months the hunting party lasted not a single witness deposes to the deaths amounting to one dozen!—a very different state of things from what would have been had cholera been prevalent. The inferences to be drawn from the evidence as to the state of the bodies a short time before and immediately after the death as deposed to by George Shopcott, the two bhistees and the apprentice who attended them is, that from some cause or other the bodies were in a dreadful state of laceration, and connecting this appearance with the beating and torture as deposed to by the other witnesses, we have in the absence of any attempt to prove how their bodies became in such a state, a right to connect the two as cause and effect. Besides the English coachman there is another witness whom, we suppose, the learned Counsel for the defence will allow to be respectable,—we refer to Mohammed Ameen, the eunuch, the Darogah of the tents, the sharer of Aman Ali's tent. The Court will doubtless bear in mind the very unwilling manner in which this man gave his testimony. The explanation he offered relative to the pal being pitched so near the Meeah's tent; and how he admitted that all the Meeahs dined every day with his Highness; but it has been attempted to be proved that it would be derogatory to the dignity and high position of Aman Ali Khan even to go to their tent. The servant degraded by entering the tent of those his master delighteth to honor!!

We now proceed to remark on the defence set up by the defendants, who have called evidence besides that to character. For the defence of Meah Afreen two witnesses are called. We grant that this defendant is not a servant of the Nizamut; but it is proved that he was at Purranpore the day the camp arrived and the following night, by both his witnesses; and one of them, Hossein Bux, would have the Court believe that this man, who accompanied his Highness of a day out hunting, was at night fain to sleep under a tree with the servants. The parties who were charitable enough to have a pal put up for a dying faqueer and the son of a Khowas within a few paces of the Meah's tent had not hospitality sufficient to offer the shelter of a tent at night to Meah Afreen, the companion all day in hunting of his Highness. Further comment on such evidence as this is quite unnecessary. For the defence of the Urzbegy Imam Ali one witness alone appears, and all that he says is that the defendant used to go to his Highness when called for, but that there was no exact time for attending. This falls far short of the defence set up and requires no comment from us. For the defendant Mirza Mahommed Hossein *alias* Moghul Jaun two witnesses are called. It would appear that this man is a sort of Purwanah or Roobkharee Nuvees, the office he bears being that of Naib Meer Moonshee,—certainly nothing of a confidential nature, although it may be called in one sense literary. The defendant Furreed Khan calls witnesses to prove that he never beat at Nougurreah the deceased Muddee. His witnesses were four in number. Three were examined. Of these two were camel drivers and one was a mate mahoot. These men came prepared to swear through thick and thin that they accompanied Furreed Khan on the occasion in question to Nowgurreah, that they were with him all the time that he was there, and that he did not on that occasion beat any body. The first witness was duly cross-examined, and nothing was elicited inculpating any of the defendants. Mukhoo was the mate mahoot and went on foot to Nougurreah, while the others rode on the camels. He had been cross-examined by Mr. Trevor and he had sat down, when the Court asked him by whose orders the camels were sent to Nougurreah. He then mentioned Aman Ali's name, and was soon after cross-examined at great length by Mr. Clarke, the learned Counsel for Aman Ali, but nothing was elicited from him at all contradictory. He said that he remained with the camels at the tent of the Meahs, while the three camel drivers went to the Khan's tent. He was asked if he heard the Khan give the order. He said "no," but that he had heard from the three camel drivers who had gone to the Khan's tent that he had given the order for them to go to the Burra Saheb and do what he told them. His account was perfectly natural. He said there was a crowd at the place where he was, but that he could swear that he heard from the three camel drivers that they had received orders from Aman Ali Khan. Of course he could. These three men alone, as far as he knew, went to the Khan's tent for orders. The next witness was Bakur Ali, one of the three camel drivers who went to Nougurreah with Furreed Khan, and who were stated by the witness last referred to have gone to the tent of Aman Ali. It was elicited by a question from the Moulvee that the two camels were taken by Aman Ali's order to Nougurreah, that he told the drivers to go to the Burra Saheb for orders, that they went, that the Burra Saheb gave them a chit to one Lala Jiban Lal, at Nougurreah, and told them to take Muddee (one of the deceased) there. That they did so. He also swore distinctly that Furreed Khan did not hit any one at Nougurreah. Now we allow that what these men said about Furreed Khan is totally false, but that does not taint all their evidence. We affirm that there is hardly ever a case in which influential parties are concerned, in which the principle of rejecting part and adopting part of a witness' evidence is not called into play. In affray cases especially, we may remark that there is always an attempt to inculpate either the zemindars themselves on whose behalf the affray took place as being actually present, or if they are not named their principal servants are. In numberless instances the evidence of the same witness is considered as worthy of belief, *quoad* the *latteals*, and rejected *quoad* the zemindars or their servants. It is a satisfaction to us to be able to state that the principle we contend for is recognized in England. The rule is thus laid down in Taylor on Evidence, pages 949 and 950: "Where a party being surprized by a statement of one of his witnesses calls other persons to contradict in a particular fact, the judge is not on that account authorized in rejecting the entire testimony of the contradicted witness. The discrepancy may indeed form a fair topic for Counsel as to the degree of credit to which the witness is entitled, but the whole evidence must go to the jury, who may be perfectly justified in believing one part of it and rejecting the other." If this is applicable to England—

where the sanction of an oath is much regarded—how much more applicable is it to India—where, unfortunately, an oath is no guarantee for truth. That principle we apply here. We would reject the evidence of these men as to Furreed Khan's innocence, contradicted as it is by that of George Shopcott, and adopt it as to Aman Ali. The Court will doubtless remember the manner in which the facts inculpating Aman Ali were elicited from these witnesses, the manner in which they gave their evidence, and the vain attempts of the learned Counsel to make them contradict themselves. We have no doubt that the evidence of these two men will have due weight with the Court.

Before finally dismissing this defendant Furreed Khan we beg to direct the attention of the Court to his defence. In two points he corroborates the evidence of the prosecution. He says that on the day of the theft his Highness returned from hunting at 1 o'clock, and he also states that Muddee started from Nougurreah on a camel. That on the road they met Moghul Jaun and Burra Saheb who took him on an elephant. The fact deposed to by one of the witnesses for the prosecution that he did return on an elephant has been much insisted on as a serious discrepancy by Mr. Montriou.

It only remains for us to notice a point relative to one of the charges which has been animadverted on by the learned Counsel for the defendant Aman Ali Khan,—we allude to the third count, which charges the defendants with "privity." The meaning of this term is thus explained in C. O., No. 8 of Vol. 4, (page XXIII of the Addenda of Beaufort's Guide 132 a.) "The act which constitutes what is called 'privity' in this country corresponds with 'misprision of felony,' in English law, viz., the concealment or the procuring the concealment of a felony which a man knows but never assented to or the observing silently the commission of a felony, without using any endeavors to apprehend the offender. It is, therefore, strictly an offence of a negative kind consisting in the concealment of something that ought to be revealed."

Accessaryship, on the other hand, is an offence of a positive kind and of a higher degree of criminality, implying an active participation either by procuring, counselling, commanding, or abetting another to commit a felony or with a knowledge that a felony has been committed by another, by receiving, relieving, comforting, or assisting the felon. The distinction between the two offences is marked,—the one is a misdemeanor in English law, the other is a felony; the one is in its kind negative, requiring nothing but silent passive acquiescence in the commission of a felony to constitute it, the other is a positive participation in the commission of a felony either by counsel and command before the fact or by relief and assistance given to the felon after the fact." It appears then that to have made this charge intelligible to the learned Counsel for the defence we must have used the term 'misprision of felony,' which would not have been allowed by the Court to remain in the calendar. We now conclude this reply leaving the result with all confidence in the hands of the Court, feeling sure that every justice will be done in the matter.

(Signed) E. Trevor,

,, Shumbhonath Pundit,

Conducting the Prosecution on the part of Government.

7th September 1853.

The following is the report, by Mr. Money, the Sessions Judge of Moorshedabad, to the Sudder Nizamut Adawlut at Calcutta :—

To the Register of the Sudder Nizamut, Adawlut, Fort William.

Sir,—I have the honor to submit for the purpose of being laid before the Court of Nizamut Adawlut the proceedings on the trial noted below, held at the station of Moorshedabad, on the 22d, 23d, 24th, 25th, 26th, 27th, 29th, 30th, and 31st August, and 5th and 7th September 1853.

2. The prisoners pleaded not guilty.

Court of the Sessions Judge for the city of Moorshedabad.

Trial No. 1 of the Sessions Judge for the month of September 1853.

Case No. 7 of the Magistrate of Moorshedabad for the month of July 1853.

Government, Prosecutor.

vs.

37. Aman Alee Khan, (father's name not known) aged 30 years, date of apprehension 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

38. Musserut Ali Khan, son of Abdoola, aged 35 years, date of apprehenson 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

39. Syud Imam Ali, son of Syud Buber Ali, aged 52 years, date of apprehension 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

40. Jowahir Ali Khan, (father's name not known) aged 60 years, date of apprehension 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

41. Meahn Arjoomund, son of Abdoola, aged 30 years, date of apprehension 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

42. Meahn Afreen, (father's name not known) aged 30 years, date of apprehension 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

43. Meahn Bolal, (father's name not known) aged 27 years, date of apprehension 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

44. Meahn Ikbal, (father's name not known) aged 25 years, date of apprehension 6th June 1853 or 25th Jyet 1260. date of commitment 30th July 1853 or 16th Srabun 1260.

45. Hajee Tomash, son of Abdoola, aged 50 years, date of apprehension 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

46. Mohammed Furreed, son of Baboo, aged 26 years, date of apprehension 6th June 1853 or 25th Jyet 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

47. Mirza Mohammed Hosein *alias* Moghul Jaun, son of Mirza Alee Khan, aged 30 years, date of apprehension 15th June 1853 or 2d Assar 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

48. Joomun Sheikh, son of Akaloo Sheikh, aged 40 years, date of apprehension 17th June 1853 or 4th Ashar 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

49. Peer Khan, son of Shahadut Khan, aged 50 years, date of apprehension 21st June 1853 or 8th Assar 1260, date of commitment 30th July 1853 or 16th Srabun 1260.

Charge.

The prisoners charged on the 1st count with the wilful murder of Hingoo and Muddee.

On the 2d count with being accessaries before and after the fact.

On the 3d count with privity to the said crime.

On the 4th count with torturing and beating the said Hingoo and Muddee deceased.

On the 5th count with aiding and abetting in the said torture and beating.

On the 6th count with privity to the said torture and beating.

On the 7th count the prisoner No. 37 is charged with having issued orders for the said torture and beating.

Date of the deceased being seized 31st March 1853, corresponding 19th Chyet 1259.

Dates of their deaths 5th and 6th April 1853, corresponding with 24th and 25th Chyet 1259 respectively. The prisoners have been in jail from 7th July 1853.

3. The history of this painful case is briefly told. The time occupied does not extend over more than five or six days. His Highness the Newab Nazim of Moorshedabad, during a shooting excursion in the district of Maldah, pitched his camp on the 30th March last at a village called Purranpore. On the 3rd April the camp proceeded to Allal, and from thence on the 5th April to Gujol, both villages in the same district.

4. Two men—Hingoo, a faqueer, and Muddee, whose father is a gholam in the service of the Nizamut, accompanied the camp.

5. The prisoners 37 Aman Ali Khan, 38 Musserrut Ali Khan, 39 Syud Imam Ali, 40 Jowahir Ali Khan, 41 Meahn Arjoomund, 43 Meahn Belal, 44 Meahn Ikbal, 45 Hajee Tomash, and 47 Mirza Mohammed Hossain *alias* Moghul Jaun, formed a part of his Highness's suite. 42 Meahn Afreen had joined the camp, having been sent on a special errand by the Newab Begum Sahib, 46 Mohammed Furreed was a camel driver, and 49 Peerkhand, a mahout in his Highness's service, and 48 Joomun Sheikh was the servant of 39, who was the Urzbegy of his Highness, the prisoner 38 holding also high office in the Nizamut, and the prisoner 37 was the chief and confidential eunuch, having the general control over all his Highness' arrangements during this excursion.

6. The three principal tents in the camp belonged to his Highness, Aman Ali Khan, and the eunuchs. His Highness occupied the centre tent, on one side of which was the tent of Aman Ali Khan, and on the other the tent of the eunuchs. They were generally pitched at a short distance from each other.

7. On the morning of the 31st March, while his Highness, with the greater part of his suite, was out shooting at Purranpore, a tin box, containing property to the value of above Rs. 700, belonging to the prisoner 41, was missing. Hingoo and Muddee were seized on suspicion of having stolen the box, and throughout the day, before and after his Highness' return, it would appear were tortured and beaten for the purpose of inducing them to confess and point out the property.

8. The same night Muddee was conveyed upon a camel to a place called Nougurreah, about eight or nine miles from Purranpore, that he might point out a gharee-wan, to whom, he said, he had given the property. He was there unmercifully beaten, when he declared he had not given the property to the ghareewan, but to two nautch girls at Purranpore, upon which he was again placed upon the camel, and brought back, part of the way on the camel and part on an elephant, to the camp at Purranpore.

9. On the 3d April the two men were taken with the camp to Allal, and again on the 5th from Allal to Gujol, where the same day Hingoo died, and Muddee the day after.

10. It was given out in the camp that these men had died of cholera, and it was not until the 1st May following, that the darogah of Shahanugur in the city of Moorshedabad reported to the magistrate that he had heard that a murder had been committed in the camp, but that no one came forward to prosecute.

11. The orders which he received from the magistrate led to enquiry and enquiry led to disclosures, which formed grounds for the trial before the magistrate, terminating in the commitment of the prisoners to the Sessions court on the charge of murder and other lesser counts.

12. Having given a brief outline of the case I will revert to the evidence upon the record.

13. The witness who enters more fully into detail regarding the tortures to which Hingoo and Muddee were subjected is Hossainee Sheik, witness 5 on the calendar. He was the personal servant of the prisoner 41, and was permitted to turn Queen's evidence. His statement before the Sessions court is to the following effect: "I am servant of Meah Arjoomund (prisoner 41). I had a tin box under my charge belonging to my master. One morning I was asleep. Burra Sahib (absent) and Moghul Jaun (prisoner 47) were sitting inside my master's tent. About 8 or 9 A. M., I awoke and missed the box, and asked them about it. They said they did not know where it was. I told them I was sure they had hidden it. They denied this, and said, as I had given them a bad name, I should be punished when the thieves were caught. Burra Sahib and prisoner 47 went out and brought in Muddee. I did not go with them. Muddee was questioned about the theft, but would not confess. He was then taken and tied inside the tent, and because he would not give up the property, Burra Sahib and prisoner 47 beat him with a corah. They continued beating him till he promised, if they left off, he would show where the property was. He then said it was with Hingoo, and he would show them where Hingoo was. They loosened him and took him to the Indigo factory, where the faqueers lived. Not finding Hingoo there they brought Muddee back to the tent, and again beat him till he told them Hingoo was under a tree near the kitchen tent. They went out, and I saw them bring Hingoo to their tent. They said they had found him sleeping under the tree near the kitchen. Muddee told him to confess about the property, as they were taking away his life. Hingoo denied having taken the property. They then tied Hingoo and began to beat both. Muddee entreated them not to beat him more, and said he would show them where the property was placed. They took Hingoo and Muddee with them to the river side, and not finding the property brought them back beating them, and began again to beat them in the tent. Muddee then said he would show them the property at a shop at Purranpore, near which Hingoo had concealed it under some grass. Not finding it there they again brought them back beating them. Muddee said he would show it near the Indigo Factory. They took them there while I remained in the tent. They again brought them back beating them. Muddee then said he would show it under the sand near the river amongst some thorn bushes. They took them there, and were searching, when his Highness returned from hunting. I saw them searching. The river was about one or one-half russee from the tent. His Highness went into his tent, and Aman Ali Khan (prisoner 37) into his, and the Meahns into theirs. My master (prisoner 41) saw me crying and asked me what was the matter. He called out "Hossainee" three times. I mentioned about the theft, and upon his asking where the thieves were, I pointed out where Burra Sahib and prisoner 47 were bringing them. The Meahns said to the thieves, "why do you suffer yourselves to be beaten, give up the property." They would not confess. The Meahns then went to the tent of prisoner 37 and I went with them. Prisoner 37 ordered them to be beaten till they produced the property. He called out "beat them! never mind if they die. One is a chèlah in his Highness's service, and the other a fa-

queer; if they die we can say they died of cholera." The Meahns then went to their tent, and Meer Imamalee (prisoner 39) Meahn Ikbal (prisoner 41) Meahn Belal (prisoner 43) Meahn Afereen (prisoner 42) and Mussurrat Allee Khan (prisoner 38) began together to beat them. By the order of prisoner 39, Peer Khan (prisoner 49) brought a cutcha beyt with thorns in it, and they tied the thieves inside the Meahn's tent and beat them. Muddee then said the property was in a garden. They took them to the garden, and there searched, but found nothing, and brought them back to the tent, and beat them. They tied their hands and feet and beat them with the beyt and the corah. The prisoner 39 again took them to the garden, and afterwards Joomun Sheikh (prisoner 48) servant of prisoner 39, and prisoner 49, kicked them, and prisoner 39 took them with the mèther and told them they should be beaten with his jharoo if they did not give up the property. Not finding it in the garden they brought them back, and tied them to the tent pins of the Meahn's tent, and began to beat them. Burra Sahib and prisoner 47 made sharp wedges and drove them through their fingers, their hands being tied. The feet and hands were tied to separate tent pins. (The witness showed in court the way in which they were fastened); they loosened them after a while when they cried out for water. The prisoner 39 said they should have urine for water. About 2 P. M. they tied them again and took them inside the tent. The Meahns told them if they would point out where the tin box was they would give them water and heal their wounds. Hingoo declared he knew nothing about the property. Muddee said he had given it to Hingoo. They again tied them up to the two tent poles, with their heads downwards and their feet uppermost, and beat them with the kutcha thorned beyt. They all beat them. The witness pointed out the prisoners 47, 44, 43, 42, 39, 38, 49, and 48, prisoner 41 was there threatening but not beating. Hajee Tamash (prisoner 45) was there, but did not beat. I did not see Mahommed Furrid (prisoner 46). I saw Jowahirallee Khan (prisoner 40) there, but he did not beat. They were beaten all along in the *same* tent. The prisoner 41 and the Meahns lived in the *same* tent. On the 4th day the camp left Purranpore and proceeded to Allal. They took the thieves with the camp, one in a meahna and the other in a suggur gharee. They beat them again there. Muddee said that Hingoo had informed him that the property would be found under a certain tree at Purranpore. Burra Sahib and prisoner 48 went there on an elephant. Muddee was conveyed in a meahna. God knows what they did there. They went early and returned late in the evening. Burra Sahib and prisoner 48 said they had been worn out by searching for the property, and could find nothing. Then Burra Sahib in the tent trod with his feet upon Hingoo's chest. Hingoo begged him to cut his throat, but not to tread upon him. Burra Sahib with prisoners 39 and 47 said that until he showed the property they would beat him to death. They then brought Joomuck doctor, and prisoner 39 told him to give them some brandy to drink, and to use some as an application. I saw a little mixed with a poultice, and a little drank by them. They were then inside a pal on one side of the Meahn's tent near the bottlekhanna. After staying four days at Allal the camp proceeded to Gujol. About noon of the day on which they reached Gujol Hingoo died. The prisoner 39 and the rest threatened Muddee with the same fate unless he disclosed where the property was, telling him that he was a chèlah of the huzoor, [illegible] other only a fuqueer, that they would not take [illegible] back again, but cut his throat and bury him there. During the night he was very weak and died in the morning. They buried Hingoo about 3 P. M. near a bamboo jungle. They buried Muddee about 8 or 9 A. M. near a gallows. Muddee's father was a gholam (slave) in his Highness' service, and Muddee a chèlah. Burra Sahib and prisoner 47 said Muddee had once come to the Meahn's tent, and therefore suspected that he had stolen the property. Hingoo's left hand was broken, and the skin of both feet torn off. The thieves died from the violence of the beating. Hingoo was about 40 or 50 years old, and Muddee about 20 years old. No property was ever found. My master still retains me in his service. I saw prisoner 37 come one evening to the Meahn's tent and threaten the prisoners, but he did not order them to be beaten."

14. The most rigid cross-examination by the Counsel for the defence did not shake this witness's evidence.

15. How far it is corroborated by the testimony of other witnesses will appear from a brief abstract of what they deposed to from their own knowledge.

16. Sheikh Dunnoo, witness No 1 on the calendar, stated, that one after noon, about 9th Chyet, he saw Muddee and Hingoo tied up at the tent of the Meahns with their hands bound behind them and their feet fastened with separate cords to the tent ropes in front of the tent. That on Muddee's declaring the property was near the *river* (which he did because he was thirsty and wanted to drink) both the men were taken there, and brought back as nothing was found. That information was sent to his Highness, who was out shooting and who returned about 1 P. M. and sent for them and questioned them regarding the theft. That prisoner 37 threatened to have them shot if they did not give up the property, and that when his Highness ordered them to be released, *he* ordered them to be tied up. The next morning the witness saw Muddee's hands and feet torn by tent pins and bleeding, and he was burnt all over his left arm and shoulders and from the knees to the feet. He saw marks of beating on Hingoo when they were leaving Purranpore for Allal. They tried to place the thieves in suggur gharees, but could not manage it, they cried out so much, and were obliged to put them in majolah gharees. After staying two days at Allal the camp proceeded to Gujol, where he heard Hingoo was dead. Muddee died the same night. Next morning saw Jeeboo Shohada burying some one and helped to dig, saw the corpse of Muddee. Burra Sahib (not present) was there, he brought the burial clothes to be put upon the body. Sheer Allee Faqueer and two bheestees were there; witness took off the clothes that were on Muddee, put the other clothes on, and they buried him. He saw Hingoo's grave. Muddee was buried one russee distant from the encampment, and Hingoo one-half russee off in a bamboo jungle. When he saw Muddee and Hingoo tied up at the Meahn's tent, he saw there the prisoners 42, 43, 45, 44, 47, 39, 41, 40, 37, and 49 as well as Burra Sahib. All the Meahns beat them and the prisoner 37 gave orders. The witness did not know the names of the prisoners 43 and 44, but recognized them from having seen them before, and

pointed them out. He described the appearance of Hingoo's fingers and feet as having been torn by large wooden pins driven through them. This witness, too, was very severely cross-examined.

17. Hingun Khan Cooria, faqueer, witness 2 on the calendar, saw two thieves tied up near the tent of prisoner 37 for stealing the property of the Darogah of the Peelkhanah, and the prisoner 37 pare a bamboo and beat them both. Their feet were tied to the tent pins and their hands bound before them. This was a little after (12) noon. One was Hingoo; did not know the other. Hingoo was much older. Two days after at Allal ghaut he saw both of them tied up near the cooking tent, and marks of burning on one of Hingoo's hands. On the 4th day the camp reached Gajole, where he heard both were dead. When the prisoner 37 beat the thieves, his Highness was in his own tent and all the Meahns in theirs. It was about one hour after their return from shooting.

18. Ruhm Allee Sheikh, witness 9 on the calendar, states, that one morning in the month of Chyte at Purranpoor a theft occurred in the tent of the prisoner 41, and soon after there was a noise, and he went with others and saw two thieves tied up in front of the Meahn's tent. Presently a crowd collected and the people of the tent began to call out "marro banchootko" and to beat. He returned to his own duties. About 2 P. M. his Highness returned from shooting. There was a great uproar and people running about. The prisoners 37 and 41, returning at the time, asked what the tamasha was. The people at the tent told them that a box had been stolen, 37 called out "banchootko khoob maro," "make them confess where the property is." The thieves begged them not to beat them, and said they had concealed the property in the sand and would point it out. They took them to the sand and searched but did not find. They then called out "banchoot, humlogko dhoop mehn dooraya," and beat them with a cane, and a thorny branch of a babool tree, and the corah, and the mehter beat them with a jharoo, and they took them near the bazaar to the sand by the river. They there beat them excessively, and when they fell from weakness, they ordered them to be tied by the feet and dragged, after which they took them back to the tent and witness went to his work. During the night he heard cries of "Dohoy Company!" "Dohoy Nawab Sahib." The next day his Highness went out shooting. They brought the thieves out of the tent; they begged not to be beaten, and said the property was under a kuddum gatch towards the west and they would show it. They took them there to a ditch and witness went with them. The witness saw them beaten there, and again brought back. The next morning, when his Highness was going out shooting, the prisoner 37 ordered the thieves to be well beaten. Witness saw the thieves brought out and beaten severely. They entreated them not to beat them, and told them there was a sunken boat in the river where the property was, and they would show it. They went to the boat, and as the thieves were searching for the property they called out "Look! they are not searching, they are drinking water," upon which they were taken to the dry ground and beaten with the corah, beyt and jharoo all the way back to the tent, where they were tied up again inside. The witness saw the prisoners 42, 43, 44, 47, 48 and 49 beat the thieves when they were taken to the kuddum gatch. The prisoner 39 went with them. The witness saw the thieves taken in separate doolies from Purranpore to Allal, and from Allal to Gujol. They belonged to the Nizamut, as well as the bearers. The witness describes the bodies of the men as being quite raw and coloured from the beating, and the fingers without any skin on. The eyes only escaped. The prisoner 41 as well as 37 gave orders for the beating. This witness was also cross-examined at great length.

19. Hingoo Khan, bhattaburdar in the service of his Highness, witness 7 on the calendar, saw Muddee and Hingoo bound one evening at Purranpore between 7 and 8 P. M. Prisoner 49 tied their hands behind them very tight, and on their calling out prisoner 41 told him to tie them looser. A camel driver took Muddee away on a camel to Nougurreah, and brought him back to Purranpore the next morning on an elephant. Saw the prisoners 47, 48 and Burra Sahib, with the prisoners 38 and 42 following behind, take Hingoo and Muddee to the factory, where he believes they were beaten. Heard cries one night either from Hingoo or Muddee of "Dohay Darogah Sahib! Dohay Darogah Sahib!" From Purranpore to Allal Muddee was sitting in a gharee belonging to the Nizamut; his body was covered, but he saw his foot which was exposed; it was swollen. The prisoners 47, 49 and Burra Sahib were on the elephant with Muddee when he returned from Nougurreah. States his belief that the thieves died from the beating. The treatment of the thieves was spoken of in the camp, bazar, roads, and everywhere. Saw clothes in the hands of Burra Sahib for the bodies of the men.

20. George Shopcott, coachmân in his Highness' service, witness 20 on the calendar, was eye-witness to the treatment of Muddee by the prisoner 46 at Nougurreah. He states that Muddee was brought there on a camel by the prisoner 46, a camel driver, to enable him to point out the ghareewan, to whom he said he had given the property. He pointed out Junglee ghareewan, who was about to be tied up, when the witness interfered in his behalf and he was released. But Muddee in his presence for 15 minutes was unmercifully beaten by the prisoner 46. He did not see Muddee again till he saw him and Hingoo at Gujol Hath. They were in the same pal and attended by Joomuck Doctor who, with the aid of the mehter, was applying turpentine and sweet oil to their legs and getting ready poultices. Hingoo then was dying, and Muddee was calling out to the people outside to bring water for him. The Burra Sahib was there all the time. The next morning he went again towards the pal and saw Muddee in a dying state. From his own tent he saw them both buried. The witness describes the appearance of Hingoo's body, when he saw him in the pal, that he was raw from the knee to the foot, raw in parts from the neck to below the waist, the skin was off, and the body very much swollen. He describes Muddee also as being in the same state, "*raw all the way down*" when he saw him dying. When he last saw Muddee and Hingoo there were no appearances of cholera.

21. Doolal hurkaru, witness 12 on the calendar, in the service of his Highness, was an eye-witness to the prisoners 39, 47, 48, 49 and Burra Sahib taking the two thieves with their hands bound to the river and back and beating them both going and returning.

22. Ghasoo chobedar, witness 11 on the calendar, in his Highness' service, heard the noise of beating in

the Meahn's tent the day the two thieves were apprehended and cries of "mare baprè, I will show the mál." Saw the next day the Burra Sahib and the prisoners 46, 47, 48 and 49 with 39, 42 and 43 taking the two thieves to a mangoe grove and beating them and bringing them back the same way, not having found the property, to the tent. Does not know what occurred in the tent. Saw them again about noon taken to the river side and brought back the same way. He did not see 42, 43 beat, and is not positive as to 39, though he saw a beyt or some instrument in his hand, and believes he was beating. He went with the advanced tents to Allal, and about 3 P. M. saw the thieves brought in a Nizamut shuggur gharee near the tents. Their feet were bound with bandages. Prisoner 37 gave all the orders, and had all the arrangements about the gharees, tents, &c. When he witnessed the beating, he saw the thieves taken to the Meahn's tent. The thieves always remained there.

23. Junglee Sheikh the gharcewan, witness 16 on the calendar, confirms the evidence of George Shopcott regarding his interference in the witness's behalf, when Muddee was beaten at Nogurreah. The prisoner 46 only struck Muddee twice in the presence of the witness, but from his statement it would appear that Muddee had been beaten elsewhere. He saw marks upon his arm. He saw prisoner 46 tie Muddee and put him on a camel before him, and take him to Purranpoor. This witness states that prisoner 46 took the two thieves to Allal in two Nizamut meanahs.

24. Hajee Nunna, witness 19 on the calendar, tailor in his Highness's service, confirms G. Shopcott's testimony regarding the beating of Muddee at Nougurreah, when he could not point out the gharcewan, to whom he said he had given the property. The moshruff who was comparing the gharcewan's name with the list in his hand, called out to Muddee, "You have told a lie, you rascal?" "Maro Hurumzadako!" Prisoner 46 began to beat him, and he kept calling out "Dohay Jonab Alee!" "Dohay Sahibka!" "Humko nahuk marta!" The prisoner seeing the beating ran away. The next morning he saw prisoner 46 take Muddee with his arms and legs bound on a camel to the factory at Rogonauthpore.* One day at Purranpore went to the tent of the prisoner 49, where all the Meahns lived. There was only Burra Sahib there. Muddee had told him that he had given the property to the faqueers. Burra Sahib sent for them all, and by his directions they beat Muddee. Saw on his body blows of kunchees and corahs. On the 5th day proceeded to Allal, remained there two days, and on the 4th day reached Gujol. The next morning went to the Meahn's tent, saw Muddee sitting there, and his father Etwarre, and heard Muddee say to his father, "my body is burning, give me some medicine to cool it." He also called out "Meahn Sahib! give me some medicine to cool my body!" "Khan Sahib! give me some medicine to cool my body!" The doctor came and the Bhatjee and gave the father some medicine for the son, saying it would cool him. About 4 P. M. heard that Muddee was dead. The witness saw Hingoo with Muddee in a talka pal near the tent of prisoner 39. Saw Hingoo on the road going to Gujol in a meanah. Muddee was on a ruth at the time. Both belonged to the Nizamut—points out prisoner 48 as present in the Meahn's tent, when the faqueers beat Muddee. Saw on the bodies of Hingoo and Muddee marks of the corah and beyt.

25. Ameer Alee, witness 21 on the calendar, employed as a moojraye in his Highness' service. One day at noon at Purranpore saw prisoners 47, 48, 49 and Burra Sahib beat Hingoo and Muddee, some with a stick and some with their hands. They took them in this way to the river, and then brought them back, and took them to the Meahn's tent. What occurred there he does not know.

26. Mohammed Ameen, witness 22 on the calendar, a eunuch in the service of his Highness, states that one day at Purranpore he went shooting with his Highness, and returned with him. A man came and gave information that the box of prisoner 41 was lost. On hearing this his Highness went to his tent, and prisoner 37 to his. Witness heard the thieves were caught, and went to see them in the Meahn's tent. He saw Hingoo tied, and another, whose name he does not know, but his father's name is Etwaree, sitting near him. Burra Sahib and prisoner 47 were beating them with a stick or beyt,—Can't say which, and threatening them. Hingoo was saying, "You are beating me unjustly, let me go." Witness went and told prisoner 37. He sent Amanut Hurkaru to the Urzbegy (prisoner 39) to enquire who was beating them, and to let them go. Witness saw nothing more that day. He remained in the tent of prisoner 37. The next morning early some one came, Ramjeebun or some one, and said they were still beating the thieves and had not let them go. Prisoner 37 sent Ramjan Assarburdar and desired him to go and see if the thieves were still there, and if so, to let them go. This witness in reply to a question by the Court stated that when he went to the Meahn's tent to see the thieves, he saw there prisoner 39 and 48, and that some of the Meahns were inside and some outside the tent. He could only remember the prisoners 39 and 48. He did not go inside the tent. He saw the thieves in the verandah of the Meahn's tent. Hingoo's hands were tied to one of the tent pins. He did not mention to prisoner 37 that prisoner 39 was in the tent when he saw the beating. Prisoner 39 knew that he was there. Ramjan went to the Meahn's tent, but witness does not know what information he gave on his return to prisoner 37. He does not know if the thieves were released according to his orders. They died seven or eight days after at Gujol. Witness gets 116 Rs. per mensem from his Highness for different offices. On being questioned by the Counsel for the prosecutor he stated that the camp went from Purranpore to Allal, and from Allal to Gajole. There were three tents in the camp, one belonging to his Highness, one to prisoner 37, and one to the Meahns. Witness lived in the tent of prisoner 37. In the Meahn's tent there were the prisoners 39, 41, 38, 47, 40, 44, 45, 43, 42 and Burra Sahib and servants. His Highness' tent was always pitched in the centre, that of the prisoner 37 on one side and that of the Meahn's on the other. There was a kanat between his Highness' and the Meahn's tent; the distance between the two tents about 100 haths the distance between his Highness' and the tent of prisoner 37 about 80 or 90 haths. The two men died in the pal near the Meahn's tent. Witness saw the pál. It was two or four haths from the Meahn's tent. The pals were in charge of the darogah of the Furrashkhannah. Witness is the darogah of Furrashkhannah. No one came to him for the pal for the two thieves. Etwaree used to live

* Rogonauthpore is the same as Purranpore.

in that pal, and the two men were brought there and died there. Etwaree Khowas and other Khowasses occupied the pal. Generally the pal these men occupied was placed two or more haths from the Meahn's tent, more or less according to the nature of the ground. The pal was standing near when he first saw the men beaten. On being cross-examined by Mr. Montriou the witness stated that prisoner 39 used always to dine with his Highness and prisoner 47 occasionally. Excepting prisoner 47 and prisoner 45, whose hand was broken, all the Meahns dined every evening with his Highness.

27. Kangalee Sheikh Bheestie in the service of his Highness, witness No. 27 on the calendar, at Purranpore one day saw one of the thieves, does not know his name, brought there on a camel. Went from Purranpore to Allal and from Allal to Gujol, where the thief died. The hurkaru told him to bring some water and come along with him. Went and washed the body of the thief before it was buried. Describes the injuries upon it. The skin was off all over from the back and different parts. The wounds appeared to have been caused by beating. It was about 3 P. M. He was buried in a bamboo jungle near a tank. He was buried immediately after the washing. The grave was dug before witness came there. He was called by the hurkaru about 3 P. M.

28. Sheikh Shekardee, witness 28 on the calendar, went with his Highness' camp from Purranpoor to Allal and from Allal to Gujol. After Hingoo's death a hurkaru called witness, and he went with water to where the body was near a grave, saw marks of beating all over the body, arms, back, &c., long marks. Did not notice whether there were injuries about the feet. Did not observe whether there were marks of burning. Washed the body and came away. The grave was ready when he arrived there. Did not know Hingoo before. Heard people say it was Hingoo. Does not know the hurkaru's name. He was a servant of the Nizamut. Witness is also. Knew the hurkaru was a Nizamut servant by his stick and chuprass. Did not know him before. Points out the grave as being two or three russees distant from the tents. On being questioned by Mr. Montriou he stated that *Kangalee* went with him and they both washed the body.

29. Bhogwan Ghose, witness 29 on the calendar, applied ointment upon the arms and feet of the two thieves at Allal. Prisoner 48 told him it was ordered by prisoner 41 and prisoner 39. They were under a tat pál near the tent of prisoner 41. There were long scars upon the feet, hands and arms. The back was swollen, but he did not see marks. Saw marks of beating, and suspects there were marks of burning. Marks of beating are long and of burning round. Saw round marks upon the shoulders. The wounds did not heal from the applications. The men died. The applications or poultices were made of atta (meal) milk and ghee, gave them for five days at Allal. The thieves were in a tat pal near the Meahn's tent. Prisoner 48 first called him. Prisoner 41 gave him orders to put the poultices on. Used to apply them every morning at 6 A. M. Witness arrived at Gujol after the camp at 9 at night. Heard next morning the thieves were dead. On a question being put by Mr. Montriou the witness stated that he thinks the men must have died from beating, though he did not mention this before the magistrate. He judges from the wounds that they died from beating, heard that they had been beaten because a box had been stolen, but judges they died from beating from the wounds he saw. The wounds, when he last saw the men, were better, but the men died.

30. Kasseenauth Roy and Ahaloola, two witnesses, proved the confession of prisoner 49 taken before the magistrate.

This closed the case for the prosecution.

31. Mr. Clarke put in a written defence for his clients, prisoners Nos. 37, 38, 40, 43 and 44, and Mr. Montriou the same for his clients, prisoners Nos. 39, 41, 42, 45 and 47. Prisoners Nos. 46, 48, 49 defended themselves.

32. Out of 38 witnesses for the defence named by the prisoners in the magistrate's court Mr. Montriou only called four, and the prisoner 46 called three. Fresh witnesses to character only were called by both the Counsel in behalf of their respective clients, and their testimony, though not exculpatory with reference to the facts proved in evidence, was very favorable to them.

33. The following are the witnesses called in behalf of the prisoners Nos. 42 and 46.

34. Kaboolan, witness 92 of the calendar, a malee in the Nawab Begum's service, went with prisoner No. 42 to the camp on an errand from the Begum at Purranpore. Lived under any tree they could find. Left the camp at Purranpore. Were at Purranpore a night and a day. Arrived the same day his Highness arrived there.

35. Hosseen Bux, witness No. 91 on the calendar, in the Nawab Begum's service, went with prisoner 42 and Haroo and Kaboolan to his Highness' camp. They left it at Purranpore. Prisoner 42 used to remain sometime with witness, sometimes with his Highness. Remained with him under a tree at Hyathpoor. Prisoner 42 lived two days in his Highness' tent.

36. Mehengoo Sheikh, witness 98 on the calendar camel driver in the service of his Highness, was with the prisoner No 46 in the journey. Was with him when he went from Purranpore to Nougurreah and when he returned, did not beat any one before him or quarrel with any one.

Cross-examined by Mr Trevor.—Went from Nougureah to Purranpore with prisoner 46 on a camel. There were four persons. Bakur and himself went on one camel, and prisoner No 46, with some body else, does not know who, on another camel. Does not know whether he was in the service of the Nizamut or not. Went to bring Asbab by the order of prisoner 37. The prisoner 46 made the man who was with him over to Jeebun Lall, never asked prisoner 46 who the man was or anything about him. Nougurreah, 5 coss from Purranpore. The man returned with them. Never asked about him.

By the Court.—The prisoner 37 sent the camels for the Asbab.

Mookhoo Shooturban, witness 99 on the calendar, examined by the prisoner 46.—The prisoner 46 went with the camp. Was with him when he went from Purranpore to Nougurreah, and when he returned made no disturbance on the way. Afterwards went to Rajmahal. For five years never saw him quarrel with any body. (Cross-examined by Mr Trevor.) Witness went on foot to Nougurreah. There were two camels and four persons on them,—on one prisoner 46 and the man who had been caught, does not know his name; and on the other Mehengoo and Bakur. The man who had been caught

was given over to Jeebunlall Baboo.

By the Court.—A box had been stolen, and he was therefore taken at night to Nougurreah to point out the property. He was taken by the order of the prisoner 37. On his return he was taken to the Meahn's tent. The witness states he saw no body beat the man at Nougurreah, and saw no marks of beating.

Cross-examined by Mr Clarke.—They were all close to the tent with the camels; heard prisoner 37 give orders to take Muddee and the order for the camels. Witness stood by the Meahn's tent, and the prisoner 46 and the other driver went to the tent of the prisoner 37. Did not hear the order. They all told him prisoner 37 had given the order. Does not remember who first told him or who secondly, or who thirdly told him. All three told him. Can swear those three told him. A hurkaru came first and conveyed the orders. They did not believe him, and went to make sure. Left Purranpore at 11 at night, and about 3 A. M. reached Nougurreah. It was morning when they returned.

38. *Baker Allee, witness* 100 *on the calendar, examined by prisoner* 46.—Is a Nizamut camel driver. Was with prisoner 46 in the camp. Went with him from Purranpore to Nogurreah. Did not see him oppress any one on the way. Went from Purranpore to Rajmahal and then to Maldah. Considers prisoner a good man.

Mr. Montriou declined to put any question to the witness on the ground that nothing said by any of the witnessss for prisoner 46 could affect his own clients.

Examined by the Court.—Prisoner 46 and a man he does not know went upon one camel. He (witness) and Mehengoo went upon another. Left Purranpore at ten or eleven at night. Went with a letter. The letter was from Burra Sahib for Jeebunloll. When they arrived at Nougurreah they gave the letter and the man in charge of prisoner 46 to Jeebunloll. Next morning they returned about 8 or 9 A. M. to Purranpore. On the way one quarter coss from Purranpore they met Burra Sahib on an elephant, and gave up the man to him.

Examined by the Moolvee.—The camels left Purranpoor by the orders of prisoner 37. They went first to his tent, and he gave the order to take the letter and the camels to Nougurreah. He said whatever Burra Sahib orders let that be done. On their return they had no communication with prisoner 37. Jeebunloll gave no reply but only ordered the man to be taken back. Burra Sahib gave the letter and the man for them to take to Jeebunloll.

Cross-examined by Mr Clarke.—Three of them went to the tent of prisoner 37. The two camels were left near the Meahn's tent. Witness and Mehengoo and prisoner 46 went and stood at the door of the tent. Prisoner 37 was in the tent. His bed was near the door. Did not see any body else there. The servants may have been. It was night. They were all three together. Does not know who spoke first. The hurkaru called them. They asked what orders he had to give. Prisoner 37 said that Burra Sahib would give the letter. Cannot say if prisoner 37 was lying or sitting. Only heard him speak, and knew he was there. The other two were Nizamut camel drivers. Can swear they went for orders, cannot remember who spoke first. The hurkaru ordered them to take the two camels to the tent of prisoner 37. They took the two camels and left them at the Meahn's tent, and went for orders to the tent of the prisoner 37. They were servants. There was no jemadar, and they went for orders. They went to the tent of prisoner 37, because all orders were given by him; they did not therefore go to the Meahn's tent. Yes. *Swears* to all that he has stated. Does not remember what they said to prisoner 37. Remembers his order. It was "Go to the Burra Sahib and do what he directs." Prisoner 37 did not say anything about Muddee, Burra Sahib only pointed out the man. Did not speak about Muddee. Told them to take *this man* and the letter to Nougurreah. This witness adds that he never saw Muddee beaten and did not see George Shopcott at Nougureah, nor any marks on Muddee.

39. The prisoner 46 declined to call any more witnesses.

40. Having given an abstract of the principal parts of the evidence upon the record it will be necessary to examine some of the objections raised by the Counsel for the defence to the credibility of the testimony adduced in behalf of the prosecution.

41. The Counsel for the prisoner 37 and others considers the evidence of Dhunnoo as disentitled to credit, because he has stated that on the day on which he witnessed the beating at Purranpore, his Highness with the Meahns returned from shooting about 1 P. M. and that the thieves had been arrested an hour before, whereas *more credible* witnesses state that it was his Highness's custom to stay out till 4, 5 and 6 P. M., and that on *that particular day* he returned at 5 P. M. and the arrest took place about 9 A. M.

42. It is unfortunate for the argument of the learned Counsel that the prisoner 37, his client, when examined by Mr Loch, the officiating magistrate on the 16th May 1853, admitted that he returned from shooting on *that* day about 1 P. M. or 2 P. M. That it was the same day on which Dhunnoo witnessed the beating is clear, because the prisoner 37 also admitted in that examination that on his return from shooting at that time he heard that a small tin box belonging to the prisoner 41, darogah of the Peelkhannah, was missing, and that two men were arrested on suspicion. That the prisoners 39 and 47, with their servants prisoner 48 and witness No. 5 and others, beat them, and that he sent three or four times to prevent the beating, and he *distinguishes that* day from the day following by stating further that the *next* day they were also beaten by the prisoners 39 and 48, the prisoner 47, Burra Sahib, witness No. 5 and others being present in the tent, and that he again prevented the beating, and when asked what persons were acquainted with these circumstances he mentions the names of Meah Ameen and prisoners 38 and 41, 44, 42, 45 and 47 as being present.

43. The return of the shooting party in the *middle* of the day is also admitted by the prisoner 39 in his examination before the Magistrate on the same date the 16th May 1853, and by the prisoner 46 in his defence, and the prisoner 49 in his confession.

44 The Counsel for the prisoner 41 and others in his written defence states that the admissions of the prisoners before the Magistrate are not admissible as evidence in the Sessions Court.

45. The Magistrate took the examinations of the prisoners, and put the same into writing, and they formed part of the judicial enquiry. Such examinations, when reduced into writing, and attested by the prisoners, and signed by the Magistrate, and placed upon the record, are admissible as evidence; that is, such weight

will be given to them as the Court may consider them entitled to with reference to the other parts of the examinations, the circumstances of the case, and the evidence generally. This has been the practice of the Court, and the Court is not aware that such practice is opposed to the principles of English law or inconsistent with the requirements of justice.

46. A written examination taken in conformity with the regulations, which are the Magistrate's guide, is the best possible evidence of the prisoner having made a declaration of all that is contained in that examination. If the objection should be, that a part of it has been elicited by questions put by the Magistrate, the objection would not hold good so long as the magistrate does not put the questions in such a way as to extract a confession, but for the purpose of elucidating or explaining what the prisoner may be *willing* to state with reference to the charge. It only would hold good where the prisoner by such questions might be entrapped into making statements, that would be used against him on his trial, which but for those questions he would not have made. It surely was incumbent on the learned Counsel to prove in behalf of his clients that there was some omission or irregularity in the taking of the examination, in order to prevent its being used against them, instead of simply asserting that such evidence was inadmissible.

47. The witness Dhunoo No 1 does not state that the thieves were *arrested an hour before* the return of the party from shooting, but that it was one hour before their return when he first saw them bound and beaten. He did not (he states in the beginning of his deposition) hear of the theft till 12 *at noon*.

48. The discrepancy which the Counsel for the prisoner No 37 has pointed out between what the witness stated at the Sessions Court and before the Magistrate regarding the threat used by prisoner 37 to the two thieves is capable of being explained. It would seem from his answer when questioned that his statement before the magistrate was true, only that the words "if you do not give up the property" were *omitted*, meaning that the prisoner 37 asked for the order and gave it.

49. The evidence of *Hingun Khan* is not in the opinion of the Court entitled to much credit. There were discrepancies that cannot be satisfactorily reconciled.

50. With reference to the evidence of Hingun Khan, bhatta burdar, the points which the Counsel for the prisoner 41 has laid stress on as rendering his evidence totally inadmissible, because he considers it inconsistent with all other testimony to the same circumstance, viz. that part of his evidence in the Sessions Court, in which he states that Muddee was brought back from Nogurreah on an *elephant* and not on a camel, and that part of his evidence before the magistrate, in which he states that Burra Sahib and prisoner 47 were seated on the *same elephant*, are points which, being incidentally confirmed by the defence of the prisoner 46, and other evidence on the record, would dispose the Court to give that evidence greater credit.

51. With regard to the objections urged by the Counsel for the prisoner 37 to the statement of Hossene Sheikh No 5 there is no doubt that he was *personally* interested, but the personal interest he must have felt in the proceedings and the result of the trial can form no legal ground for the rejection of any part of his testimony that can be borne out by *other* evidence. He was put upon his defence at first by the magistrate, and, after his examination was taken, he was made Queen's evidence. He distinctly states that Burra Sahib and prisoner 47 arrested Muddee, because he had once come to the Meahn's tent, and they suspected him of the theft. He states that his master prisoner 41 was present, and though he did not beat, he threatened. This is not an entire exculpation of his master. There is no contradiction of his evidence by Dhunnoo to render it unworthy of credit. *All* he has stated relative to the beating, and *what* he stated regarding the brandy, may appear inconsistent with the evidence of other witnesses, because they have not stated the *same*, but their not having stated what he states is no proof that he may not have seen what he related. There is a difference in the statements of the witnesses regarding the conveyances in which Muddee and Hingoo were taken from one place to another, but it may be accounted for by the presumption that they saw them at *different* times, since it is shown that they were carried first from Purranpoor to Allal, and then one of them from Allal to Purranpore and back again, and then both of them from Allal to Gujol, and also by the *length* of time that has elapsed since these occurrences. Hoseynee Sheikh deposes that they were taken sometimes in one conveyance and sometimes in another.

52. Ruhm Khan, witness No. 9, has spoken of the theft as happening at 6½ A M. This was upon cross-examination by Mr. Clarke. He appears to have associated it with the fact that his Highness and his party had gone out shooting *when* he heard of the theft, and it is possible from this association in his mind that he may have miscalculated the time. The other discrepancies are not sufficient to affect the credibility of his general testimony.

53. Both the learned Counsel for the defence consider George Shopcott's evidence as entitled to the *fullest credit*. His evidence convicts *only* the prisoner 47 (the camel driver) who maltreated Muddee at Nougureah.

54. The same meed of praise for *truthfulness* of testimony is liberally given by both the Counsel to Mahommed Ameen, witness 22. His evidence convicts the prisoner 47 and Burra Sahib of beating Muddee and Hingoo at the Meahn's tent, and prisoners 39 and 48 of being present. He states that *some* of the Meahs were inside the tent and some out. These two witnesses have, the Court has no doubt, spoken the *truth in* AS FAR AS they have deposed, but their *silence* regarding transactions to which other witnesses have sworn, is no proof that these transactions did not take place.

55. The prisoner 49 confessed before the magistrate, and it has been proved by the attesting witnesses that the confession was *voluntary*, and that no *undue influence* was exercised over the prisoner.

56. The confession is to the following effect—"I did not murder Hingoo and Muddee. Last Falgoon I rode on an elephant and went with his Highness on his expedition. I am in his service. On arriving at Purranpoor I heard one day that a theft had taken place in the tent of the prisoner 41, and that the thieves were arrested and were being beaten. On hearing this I went to the tent to see the thieves, and saw Burra Sahib, prisoner 47, Hossence witness 5 and Joomun beating Hingoo and Muddee in the tent

of the prisoner No. 41. Some were beating with a rattan and some with a corah, and the two thieves were crying and calling out for his Highness' and Company's help. "Dohay Nawab sahib!" "Dohay Company!" Seeing this I returned to my elephant On *that* day his Highness came back from his hunting excursion at *noon*, and in the absence of the peadahs I went and placed a ladder against the elephant by which his Highness descended and went to his tent. Prisoner No. 37 and the other Meahns, whose names I do not know, but I can point them out if I saw them, asked where the thieves were, and Hosenee Khowas said they were in the tent. Then all the Meahns, including prisoner 37, went to the tent and began to beat the two thieves, and they tried to run away in consequence of the torture, but prisoner 47 and Burra Sahib abusing me called out to me to go and catch them, and I caught them. They ordered me afterwards to tie them, but I refused, as I have children (bâl bucha), on which they threatened to beat me, if I did not tie them up. I was therefore obliged from fear to tie both Hingoo's hands with a tent rope, and then ran away. What happened afterwards I do not know. I went with the *advance* tents, and do not know if they were subsequently beaten. On reaching Gujol I heard the two thieves were dead. I saw the corpse of Muddee, when he was buried, but not that of Hingoo. There were wounds upon Muddee's body. In some places the skin was torn off and in some there were bruises. Some said they died of beating, some of cholera; the doctor knows. I only saw them on the day they were beaten, and the day they died."

57. This confession, of course, is only evidence against the prisoner himself, and not against the other prisoners. The *whole* of this confession must be considered, although *all* the parts of it may not be entitled to *equal* credit. The same rule applies to this confession, as to the admission in the examination of the prisoner 37, to which the Court has adverted. The *whole* must be considered, and if there is any part in favour of the prisoner, which is not disproved by the evidence for the prosecution, and is not improbable in itself, it should be weighed and judged of by *all* the circumstances of the case. The reason of such a course, both as a maxim in law and as a practice in Court, is obvious, because it is most probable that what a prisoner admits may be true, as he could have no motive to criminate himself, but it is still left to the Court to weigh the *whole* with all the circumstances of the case, as they appear in evidence, in order to see *how much* of the whole is worthy of belief, including such facts as the prisoner may admit in his own favour, as well as those which make against him.

58. The law officer, after a very prolonged and patient trial, during which the prisoners at the bar have had the benefit, most of them, of the services of able Counsel from Calcutta to conduct their defence, has given his Futwah, which convicts by Tazeer prisoners 38, 39, 42, 43, 44, 47, 48, 49 and 46 of aggravated culpable homicide as principals, prisoners 41, 40 and 45 of privity (41 being besides the *owner* of the stolen property, and on violent presumption the *instigator* of the above crimes) and Aman Allee Khan No. 37 of instigating and giving orders and beating on violent presumption, and of privity to the above crimes on full proof.

59. I have maturely weighed the whole of the evidence for and against the prisoners, taking into consideration such discrepancies as in my mind affected the credibility of any part of the evidence, and adopting only as the grounds for my judgment such parts as I considered trustworthy, and on which safe reliance could be placed.

60. I will briefly touch upon one or two points as they have presented themselves successively to my consideration.

1st. Whether the two men Hingoo and Muddee actually died about the time they are said to have died in His Highness' camp?

On this point there can be no doubt upon the evidence.

61. 2ndly. Whether they died a natural death or by accident, or whether it was the result of an unlawful act, deliberately committed by others?

62. It was given out in the camp that these men had died of cholera, but there is not the shadow of a proof to support the rumour. On the contrary there is sufficient evidence to show, that they had previous to their death been repeatedly, and as one of the witnesses expressed himself, unmercifully beaten. It was a continuous beating, a protracted cruel torture, at different times and in different places, making it difficult after so long a lapse of time for the witnesses to the cruel acts to depose with minute exactness to *all* the circumstances attending each separate transaction. I lay aside all *general* presumptions in a case of so serious a nature. From the evidence, however, a violent presumption arises, that when the beating had told upon these poor wretches, when their skin had been taken off them, as one witness said, and their flesh was, as another described it, *raw like raw beef*, and sores covered their bodies, that *then*, and not till then, the cruel torturing ceased, and native doctors were sent for to give their aid in the last extremity. A veil has been thrown over the last scenes of the painful tragedy, but enough of evidence has been produced, amounting to legal presumption, *to unite cause and effect*, and in the absence of any proof whatever to the contrary to show that the men died from the maltreatment they received, and that their bodies were buried not far from His Highness' camp at Gajole. The learned Counsel for the prisoner 41 has referred to the rule of that great and merciful Judge Sir M. Hale against the conviction of murder, where the body, as the best proof of the *corpus delicti*, is not forthcoming. This is of imperative force in cases where the evidence is circumstantial, and there is the slightest doubt of the death of the party. In this case the evidence is principally that of *eye-witnesses*, and the death of the parties has never been denied by the prisoners. The evidence of the crime was gradually collected long after its perpetration, and the bones of the poor men, if they could have been produced and could have been recognized, would not have strengthened the violent presumption of the cause of death.

63. The next point to consider is whether those unlawful acts, this continuous and cruel maltreatment terminating so fatally, constitute the crime of murder, or culpable homicide, or any other crime of less degree.

64. The English law has laid down generally a clear distinction between the crime of murder and that of manslaughter.

Any unlawful act, which deprives another of life, in the commission of which there is no *malice* expressed or implied, is manslaughter. But what is this malice and in what manner is it to be ascertained? Blackstone, with his usual clearness and penetration, attempts to define it. He states that the malice necessary to constitute the crime of murder is *not confined* to an *intention* to take away the life of another, but that an intent to do an *unlawful act*, which *may probably* end in depriving another of life, is *included in it*; that the malice prepense essential to murder is not so properly malevolence to the individual as an evil design generally, arising from a bad heart, which may be expressed or implied.

65. So that if a man, not having in his heart a positive purpose to take life, should entertain a purpose to do another some very grievous bodily injury, and carry out that purpose, and in the prosecution of it death ensue, although the death may ensue *beside* the original intention, the act would be murder.

66. There might therefore be, in the painful case before the Court, some grounds on the general principles of the law, which would rule such cases, for considering the crime one of murder, but after giving this point the deepest attention I am constrained, with reference to all the facts of the case as elicited by the evidence, to regard it as culpable homicide under very aggravated circumstances. I am borne out in this view by the case of Kasi Mohammed *vs.* Byjonath and others decided by the Court of Nizamut Adawlut on the 29th March 1825. A case of excessive, cruel and savage torture, for the purpose of compelling a confession of theft and production of property, which ended in the death of the person abused. The law officer of the Circuit Court acquitted the prisoners, while the Judge convicted them of *wilful murder*. The Judges of the Court of Nizamut Adawlut C. Smith, H. Shakespeare, and W. B. Martin convicted the prisoners of culpable homicide with aggravating circumstances.

67. Mr. Clarke observes that every concomitant by which murders are characterised has been reversed in this case; that suddenness, solitude, and secrecy are the distinguishing marks of the worst murders, but this was the most prolonged, the most public, and the easiest of detection, and Mr. Montriou takes the same view, and from the *openness* of the acts doubts the possibility of their commission.

68. The *publicity* of the acts, that is of such acts as were committed *outside* of the Meahn's tent, is no ground for discrediting the joint testimony of so many witnesses, though to some extent it may be ground for believing that those who committed them did not in the commission of them *intend* to take life, but to go to the extremest length *short* of taking it. The *publicity* may be attributed to the *presumption* under which the prisoners appear to have acted, that as members of his Highness' household they had *within* his camp the power to apprehend and punish for theft, and to the *gratification* which some of them, peculiarly circumstanced as they are, might naturally feel in openly displaying that power, and to the *hope* that in the event of any thing untoward happening the ægis of the Nizamut might be extended over them to shelter them.

69. The next point to consider is whether the parties charged, and which of them, were guilty of this crime, and whether as principals or as accessaries or privy to it. The motive of the crime is clear. It was the discovery of the stolen property, and the men were maltreated to the death, on the suspicion that they were the thieves, and with the view of making them confess where the property was concealed. The *exact* time, when each separate act was committed, is not so important in a case like this where the crime has *continuance*, nor is it so necessary, where *so many* were concerned at *different* times, to specify distinctly the *exact share* which each took in each different transaction, or to particularise distinctly the *exact instrument* which was used by each in the beating or the torture. It is not necessary to prove by whom the *fatal* blow was given. All who were present aiding and abetting the acts would be principals; all who were present and assisting at the beating would be guilty of the death of the parties, though they themselves did not beat, *provided death* ensued from the beating.

70. I disagree with the Futwa in the conviction of the prisoners on the different counts. I would in advertence to the above remarks convict the prisoners Nos. 39, 46, 47, 48 and 49 as principals in the culpable homicide of Muddee and Hingoo attended with very aggravated circumstances, and with reference to the precedent of Byjnauth and others already alluded to, in which the principal was sentenced to 14 years' imprisonment, and the accomplices to 10 years' imprisonment and less according to the different degrees of criminality, I would recommend them to be sentenced to 14 years' imprisonment with hard labour in irons in banishment, and the prisoners Nos. 40, 42, 43, 44, as aiding and abetting in the aforesaid crime, to 10 years' imprisonment with labour in irons, and the prisoners 41, 45, on the same count, but as less culpable and with reference to their previous good and inoffensive character, to 6 years' imprisonment with labour without irons, and prisoner No. 38, against whom *only one* witness Hosenee deposes as to beating, another, Jinghoo Khan, deposing only to his *following* the party who took the deceased to the Factory, as privy to the crime, to 3 years' imprisonment with labour commutable to a fine of 100 Rs.

71. With regard to the remaining prisoner No. 37 I must say, after carefully weighing the whole of the evidence against him, I am not satisfied with that part of it which would implicate him as the instigator, which he would be if it was satisfactorily proved that he gave orders for the two men to be beaten. A Court must give no weight to suspicions in so grave a crime; even *light* presumptions would be insufficient. It is true that a number of presumptions may by their accumulation become important, and it has been held a good maxim in weighing evidence "possunt diversa gênera ita conjungi ut quœ singula non nocerent, ea universa tanquam grando reum opprimant." There is a presumption that the witnesses spoke the truth in what they stated regarding the orders the prisoner 37 gave, when Muddee at night was taken on a camel by the prisoner No. 46 with a letter from the Burra Sahib to Nougurcah. Such evidence does not prove that the injuries which Muddee received at Nougureah were inflicted by the orders of the prisoner No. 37. His own directions may have extended only to the conveying of Muddee under surveillance to Nougureah for the purpose of discovering the property, which he was accused of having stolen. Taken in conjunction with other facts in evidence the suspicion may go *further*, but it does not amount to legal presumption. The statements of the witnesses relative to the orders they heard him give for the beating of the two men, after the return of the party from hunting, *from the manner* in which they are given, are

not sufficient for conviction. Whatever amount of suspicion attaches to the fact, it does not upon the evidence to my mind amount to legal proof. The Counsel for the prisoner No. 37 has called the attention of the Court to the number of enemies who are likely to have plotted against his client. This was stated by one of the witnesses for the defence, and would be a natural consequence of the high position he occupied in his Highness' household, and is good ground for inducing the Court to weigh the whole of the evidence with great care and caution, and on whatever point it does not amount to legal proof to give his client the benefit of a doubt. The accumulative presumptions, arising from the whole of the evidence, afford full legal proof of his being an accessary after the fact both in harbouring the principals and in concealing the crime, and I would recommend him to be sentenced to 7 years' imprisonment with labour.

72. The Court has departed from the usual practice and rule of procedure in taking the evidence of witnesses according to their number upon the calendar. This was permitted at the particular request of Mr. Trevor, and with the assent of the Counsel for the defence. They were examined as they were called for the prosecution, the number against their names being retained. Out of 68 witnesses Mr. Trevor very judiciously selected only 24 for examination, of which number 4 were afterwards rejected by him as unworthy of credit, and one was directed by the Court to be committed for perjury.

73. The trial has occupied a long time, and the cross-examinations of some of the witnesses may appear to have been unnecessarily extended. It was the object of the Court not only to throw no possible obstacle in the course that was pursued for the defence of the prisoners, but to allow that course the utmost latitude, feeling confident that the ends of justice would be better secured by such a procedure, and having this object in view, it permitted a longer cross-examination of some of the witnesses than may have been necessary, and refrained from interrupting questions that may have been irrelevant or not pertinent to the issue.

74. Less reliance is not to be placed on the evidence of the witnesses who have been examined on this trial for the prosecution, *because* their depositions were taken by the Magistrate *so long after* the occurrence of the transactions to which they deposed. It could not have happened otherwise. They were witnesses who were with the camp of the Nawab. It was not till his Highness had returned from his expedition that rumour became prevalent and their testimony available. There were some witnesses whom the Magistrate might have examined, and from whom certain facts might have been elicited, to connect more closely the chain of proof, who, from his not examining them, were secured as witnesses for the defence, and of whose evidence the Court was consequently deprived. There is moreover little doubt that had the Magistrate with the permission of the Government proceeded to the spots where these tortures were inflicted, additional evidence might have been obtained besides that of the followers of the camp and of the servants of his Highness' household; but notwithstanding this, credit is due to that officer for the manner in which he prosecuted the inquiry.

75. Mr. Trevor in his reply has made a few remarks on the non-appearance of Etwaree, the father of Muddee, as prosecutor on the trial. The Court observes that when examined by the Darogah he declared that his son had died of cholera. His bare assertion against the accumulated evidence of the torture and the injuries inflicted on his son is a prominent and dark feature, almost incredible, in this revolting case. It appears in evidence that he is a gholam or slave in the service of his Highness, and that his son was a chelah, that is, had he lived, he would have become at his father's death a gholam in *his* place.

76. At the close of the case for the prosecution, the Court intimated to the Counsel for the defence the usual practice of taking in writing separately the defence of each prisoner, when both the Counsel for the defence replied that such a course was not necessary for their clients, but that they would with the permission of the Court put in on their behalf a written defence in English, accompanied with translations for the benefit of the Law Officer, to which arrangement the Court assented.

77. This report is much longer than I had originally intended it should be, but while writing it, I thought it better, as the case was one of great importance and interest, to give the greater part of the evidence in full, and to take up and express the opinion of the Court on the different points which presented themselves as deserving of remark, as well as those on which the learned Counsel for the defence thought fit to lay particular stress.

I have, &c.,

(Signed) D. I. MONEY, *Sessions Judge.*

Sessions Court, City Moorshedabad, the 22nd September 1853.

JUDGMENT OF THE SUDDER NIZAMUT.

(Present—Mr. Mills and Mr. Raikes.)

This case is referred for the orders of the Court on two grounds; firstly, because the Session Judge disagrees with the Futwa of the Law Officer in regard to the degree of criminality of some of the prisoners; and, secondly, because he is of opinion that the principal prisoners are deserving of a higher punishment than it is within his competence to award.

It would appear that the Nawab Nazim of Bengal, attended by a large retinue, went towards the end of March last on a shooting expedition in the Maldah district, and that on the morning of the 31st of March, while he was out sporting, a box containing money and some valuables, was missed from the tent of the Mealms, which at the time was occupied by the prisoners No. 38, 39, 40, 41, 43, 44, 45 and 47. The box belonged to the prisoner No. 41, and was in charge of the approver, Hosseinee. It would further appear that a lad by name Muddee was arrested on some vague suspicion; that he was severely beaten as a means to induce him to deliver up the stolen property; that he inculpated Hingoo, who was subjected to similar ill-usage; that this treatment was continued for several days in succession; and that it caused the death of Muddee on the 5th and that of Hingoo on the 6th of April.

The above is a brief outline of the facts of the case, which are established by the general evidence, and are admitted by the Counsel who represented the prisoners No. 37, 38 and 40, before the Court.

The Session Judge has convicted the prisoners 39, 46, 47, 48 and 49 as principals; No. 40, 41, 42, 43, 44, and 45 as aiders and abettors; 33 as privy to the crime; and 37 as accessary after the fact.

As the crime was for sometime concealed from the authorities, no inquest was held, and no medical evidence is forthcoming as to the state of the bodies after death; but the evidence of Mr. Shopcott, the two bheesties who washed the bodies, and the apprentice who applied remedies before death, as to their condition a short time before and immediately after death, fully justifies the Court in the belief, on violent presumption, that the deaths of the deceased were the consequence of the cruel maltreatment they had received. The question for the determination of the Court therefore is, whether the accused parties before the Court took any, and what part, in this ill-treatment, or are in any way connected with the crimes charged against them.

Mr. Clarke and Mr. Waller for the prisoners have strongly pointed the consideration of the Court to the worthlessness of the evidence in general, urging that the charge against their clients originated in a foul conspiracy, got up by plotters in the Palace to criminate and ruin the prisoner No. 37, who is the favourite of the Nawab Nazim and the head man of his household.

The notoriety of the events which form the grounds of this case, must have made them known to so many who were present with the Nawab's camp, that we are not surprised to find that a large number of witnesses was, in the first instance, brought forward to tender evidence against any accused party; but of these the Government prosecutor selected 20; and in consequence of contradictions and discrepancies in the depositions of 5 of these witnesses before the Sessions Court, he rejected their testimony as unworthy of credit. The testimony of the remaining witnesses on which the leading points of the case must rest, and on which the Sessions Judge has based his verdict against the prisoners, has, under the above circumstances, been narrowly scrutinized as regards its truth, and carefully weighed with reference to its respectability, its general consistency, and the probabilities suggested to our minds in considering all the circumstances of the case. Before coming into Court, we had attentively considered the evidence, the written defences put in by Counsel at the Sessions Court, and the remarks of the Session Judge in refutation of the objections raised therein to the credibility of the testimony of each witness, and had come to the conclusion that the statements of Hossainee Shaikh, the approver, Danoo Khan, Ruheem Ally and Hingun were open to grave suspicion. This suspicion the arguments of the counsel for the prosecution have failed to diminish.

The counsel for the defence have strongly animadverted upon the testimony of the above named witnesses in particular. They have directed attention to their want of respectability, the circumstance under which they came forward to give their evidence, the general improbabilities and contradictions involved in their statements, and the difficulty of believing that they were ever allowed to be spectators of the events they describe.

The Court will first remark on the evidence of the approver, Hossainee. This man was first arrested as implicated in the statement of his master, Arzoo Mand, prisoner No. 44. His defence was taken down by the Magistrate, and as that defence exculpated himself from all participation in the crime, and directly inculpated the other prisoners, the Magistrate at once released him and made him a witness in the case, proceeding at the same time to recorded his testimony on the part of the prosecution. He is thus called an *approver*, and his statement is relied upon as carrying with it all the weight attached to evidence of this character when properly supported. This man had special charge of the missing property, and is the person, therefore, on whom blame, if not suspicion, would naturally fall. He was interested in the discovery of the thief, or in removing the suspicions of his master from himself; and nothing can be more probable than that he both knew and participated in the ill treatment of the deceased. In fact two credible witnesses depose that he was aiding and abetting those who inflicted the torture on the thieves; yet he refrains from disclosing any such participation, and in no way implicates himself. To have rendered his evidence effective, the Magistrate should have, in conformity with the provisions of Regulation X. of 1824, tendered to him a conditional pardon; this was not done; he was, therefore, placed under no special obligation to disclose the whole truth as in the case of an admitted approver: and taking his evidence as that of an ordinary witness, it appears to us to have been dictated by a wish to exculpate himself at the expense of his fellow criminals, and to teem with improbabilities and gross contradictions which compel the Court to set it aside altogether.

As respects the witnesses Dunoo, Hingun Khan and Sheikh Ruheem Ally, we observe that the first is a discarded Burkundauze of Police who was the first person who came forward, and volunteered evidence as he himself states in the hope of earning a good name and procuring employment. The 2nd is a lame mendicant who was indicated by Dunoo as able to give information in this case, and the 3d describes himself as a cook temporarily employed in the Nawab's service during this hunting excursion.

It is impossible to ascertain whether these persons were really present at the Nawab's camp as represented; the way in which they account for their presence there does not impress the Court with any reliance on that point, and the occurrences which they relate as taking place daily from the commencement to the close of this affair, must have taken hold on their memories in an unusual manner, to enable them, after so long an interval, to depose to particulars of which they then conceived themselves to be mere casual observers. The Court observe that Hingun Khan made such palpable contradiction before the Sessions that the Judge has recorded his opinion that 'the discrepancies are irreconcilable, and the evidence is not entitled to much credit.' We also remark that these witnesses are the only persons who depose to the prisoner No. 37 having instigated and participated in the outrage: one deposing that he threatened to blow the thieves from a gun, and countermanded the Nawab's order for their release; while another alleges that No. 37 trimmed a bamboo and chastised the thief with it; statements apparently so exaggerated could hardly be relied upon unless made by persons of undoubted veracity, and, in the present instance, totally fail to convince us of their truth, being in direct opposition to the testimony of far more credible persons. Moreover we observe that the Sessions Judge himself dis-

credited such part of the evidence of these witnesses affecting the above prisoners as instigating the assault. Under these circumstances, we cannot but regard the general character of the evidence of these witnesses as doubtful and suspicious, and we feel therefore constrained to discard it *in toto*.

The remaining witnesses* seem to the Court to have given a connected and probable account of what took place within their own observation and knowledge.

They are all servants of the Nawab, and their occupation accounts for their presence on the spot. Mr. Shopcott's evidence is in no way impeached, and that of Ameen Allee and Mohamed Ameen has been scarcely called in question: and the Court, after duly considering the exceptions taken to the remaining witnesses by Mr. Montriou in his elaborate review of their depositions, are of opinion that the contradictions elicited on cross examination are on points so immaterial as in no way to shake the confidence of the Court in their general credibility and trustworthiness. Applying, therefore, this proof to the case of the prisoners, we find there is nothing in it to bring home to the prisoners, Nos. 37, 38, 40, 41, 44 and 45 any of the charges on which they stand committed, and only one witness speaks to the presence of No. 42 and another to that of No. 43 on the occasion of the thieves being taken to the river side, but they even do not implicate them as taking any part in maltreating or encouraging the mal-treatment of the prisoners.

It has been argued by Ramapersaud Roy that the presumption naturally arising from all the facts of the case is sufficiently strong to convict the prisoner No. 37 of accessaryship after the fact to the murder and of privity to the same. The Sessions Judge has found the prisoner guilty of the first charge, in as much as he harboured the criminals and concealed the crime. On this point we have to observe that to justify a conviction on this charge there must be some act proved to have been done to assist the felons personally. The evidence discloses no proof of any overt act, nor of any other act on the part of the prisoner, from which such an inference can fairly be deduced. As regards the charge of privity to the crime, we would remark that there is no direct evidence to the fact of the prisoner 37 taking any part or being directly or indirectly concerned either in the burying of the bodies or in giving currency to the report of the thieves having died of cholera. The mere *possibility* that the *rumour* of the death of these men by torture had reached the ears of the prisoner 37, is not in itself sufficient to bring home to him the charge of concealing or procuring the concealment of the felony; to establish such a charge there must be some proof that, though not consenting, he was personally cognizant of the crime, and though able, refrained from preventing it, or neglected to use any endeavours for the apprehension of the offenders. An admission was made in the foujdarry by prisoner No. 37 which is corroborated by the most respectable witness examined to the effect,—that the prisoner, when he heard the thieves were subjected to ill-treatment sent persons to forbid it on two different occasions, and to release them. Thus there is evidence of an attempt to prevent the offence, and though death subsequently ensued some days afterwards, it would be, we think, an unfair construction of his acts to presume that he was necessarily aware that death was the consequence of such ill-treatment.

Much stress has been laid by Mr. Trevor, both in his written defence and in his arguments before the Court, on the evidence of the three witnesses cited by Fureed Khan, No. 46, as inculpating the prisoner No. 37. On their cross-examination they stated that the camels, on one of which the deceased Muddee was conveyed, bound to Nowgurriah, were sent by the orders of the prisoner No. 37, and that he was therefore assenting to the ill-treatment inflicted on the deceased. These witnesses have palpably perjured themselves as regards Furreed Khan never having beaten Muddee, as their evidence is directly contradicted by that of George Shopcott; and Mr. Trevor would wish us to reject that part of their testimony, and adopt it as to Aman Alee. Evidence so tainted must be received with extreme caution; but taken as it stands we are of opinion that it does not even go far enough to shew that the prisoner 37 was aware for what purpose the camels were required. One witness states that he *heard* from the three camel drivers that they had received orders from Aman Allee Khan to take Muddee to Nowgurriah, and another swears that the two camels were taken by Aman Alee's orders to Nowgurreah, and that he desired the drivers to go to the Burra Sahib for instructions. From the third witness nothing inculpatory of the prisoner was elicited. Considering that the prisoner had no motive for ill-using the thieves, that it is in evidence he endeavoured to prevent their ill-usage, we cannot, from this evidence, draw any conclusions condemnatory of this prisoner.

By the evidence of the witnesses relied on by the court, it is satisfactorily established that the prisoner No. 39, who lived in the Mealins' tent, took a part in the ill-treatment of the deceased. The witness No. 11 deposed to his taking with others the thieves to the river side and to his beating them going and returning. No. 12 confirms the fact with this qualification that he did not see the prisoner himself beat them, and No. 22 speaks to the prisoner being in the tent and present when the thieves were being chastised by others, and to the prisoner No. 37 sending orders to this prisoner to stop the maltreatment.

The prisoners Nos. 46, 47, 48 and 49, together with Burra Sahib, who has evaded justice, are identified by the witnesses generally as taking the most prominent part in the gross maltreatment ending in death of the deceased persons, and Mr. Shopcott's evidence especially identified No. 46, the camel driver, as on one occasion beating the deceased Muddee in the most unmerciful manner for the space of fifteen minutes. There is also the clear and well attested confession of the prisoner No. 49 before the Magistrate. We therefore, in concurrence with the Sessions Judge and Law Officer, convict the prisoners Nos. 39, 46, 47, 48 and 49 as principals in the culpable homicide of Muddee and Hingoo. The case is attended with circumstances of such aggravation and deliberate cruelty, deducible from the evidence generally, as to render the crime scarcely distinguishable from wilful murder; but adopting the principle generally inculcated by the precedents of this Court, that unless the intention of the criminal to take life is fairly inferrible from the nature and circumstances

* Jinghoo Khan, George Shopcott, Dhooleah Hurkaru, Ghossor Chobdar, Mugllee Sheik, Hadgee Nannah, Ameer Ali, Mahomed Ameen, Kangalee Sheik, Sheik Shikaree and Bhugobun Ghose.

of the case, a conviction of wilful murder cannot pass, we convict them of the minor offence of culpable homicide, and sentence them, as proposed by the Sessions Judge, to 14 years' imprisonment, with labor in irons.

The Court have noticed, in its place, the irregular manner in which the Magistrate has admitted Hosseinee to be an approver. The Court further notice, with censure, the unfairness and impropriety of the Magistrate's proceeding as regards the prisoner Azroo Mund in first taking his defence, then converting him into a witness, and examining him on oath, and then, because he considered that he had *not spoken the whole truth*, re-arraigning him on the original charge, and committing for trial.

THOMAS JONES, *Calcutta Gazette* OFFICE.